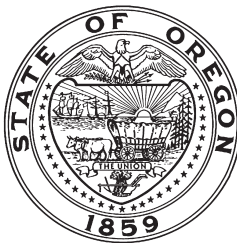


# OREGON BULLETIN

*Supplements the 2009 Oregon Administrative Rules Compilation*

**Volume 48, No. 2**  
**February 1, 2009**

**For December 16, 2008–January 15, 2009**



Published by  
**KATE BROWN**  
Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

### Background on Oregon Administrative Rules

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

### How to Cite

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

### Understanding an Administrative Rule’s “History”

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

### Locating the Most Recent Version of an Administrative Rule

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

## Locating Administrative Rules Unit Publications

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

### 2008–2009 Oregon Bulletin Publication Schedule

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

### Submission Deadline — Publishing Date

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

### Reminder for Agency Rules Coordinators

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

### Publication Authority

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

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER 08-26

### OREGON ENERGY PLANNING COUNCIL

Our decisions in the next decade will determine Oregon's energy future. Whether it is demand from our growing economy or growing population, Oregon's energy needs are expected to increase. Oregon has charted a course to meet future demand with renewable energy, aggressive conservation strategies and increased efficiency. It will take time, however, to implement Oregon's green, more efficient energy plan and invest in the energy infrastructure needed to incorporate renewable energy into the grid.

On August 27, 2008, I hosted a Summit on Oregon's Energy Future. At the Summit, energy suppliers, public officials, scientists, labor and business representatives, students and environmentalists gathered to begin a discourse about creating Oregon's energy future. The Summit identified Oregon's need for a formal, comprehensive planning process to move the state toward clean, renewable energy, while also addressing the immediate issues of price stability and supply certainty for Oregon families and businesses.

Energy supply and demand are dynamic and thus, the State's energy planning requires ongoing analysis, flexibility and adaptability. Even in these tough economic times, the need to address Oregon's energy future in a comprehensive way remains an essential goal. The future well-being and prosperity of Oregon's families and businesses depend on it. This Executive Order establishes the Oregon Energy Planning Council to provide proactive analysis, advice and assistance on energy planning.

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

1. The Oregon Energy Planning Council ("Council") is hereby established.

2. The Council shall consist of eleven members appointed by the Governor for terms of three years each. Members shall represent the best interests of Oregon as a whole. The Council shall include:

- a. A representative from the Oregon University System;
- b. A representative who is knowledgeable about energy transmission;
- c. A representative who is an energy economist;
- d. Two representatives of ratepayers;
- e. A representative of renewable energy providers;
- f. A representative of the Bonneville Power Administration;
- g. A representative of natural gas providers;
- h. Two representatives of electricity providers; and
- i. A representative who is knowledgeable about energy efficiency and conservation.

3. All members serve at the pleasure of the Governor. The terms of each appointment shall be three years. Initial terms shall be proportionately staggered to periods of one, two and three years. Members may be reappointed. The Governor shall designate a Chair, who will serve at the pleasure of the Governor.

4. The following Oregon officials or their designees shall serve as *ex officio* members of the Council:

- a. Chair of the Board of Agriculture;

- b. Chair of the Board of Forestry;

- c. Chair of the Economic and Community Development Commission;

- d. Chair of the Energy Facility Siting Council;

- e. Chair of the Environmental Quality Commission;

- f. Chair of the Fish and Wildlife Commission;

- g. Chair of the Land, Conservation and Development Commission;

- h. Chair of the Oregon Global Warming Commission;

- i. Chair of the Oregon Investment Council;

- j. Chair of the Public Utilities Commission; and

- k. The State Economist.

5. The Council shall meet at least quarterly and at the call of the Chair or the Governor. The Council's deliberations shall be public, and the Council shall hold meetings at different locations throughout the state, at the direction of the Chair.

6. On or before December 31, 2010, and continuing thereafter on a biennial basis, or at the request of the Governor, the Council shall issue an Oregon energy planning report to the Governor and the Legislative Assembly, which may outline:

- a. Oregon's current energy use and energy supply and its future energy needs;

- b. Challenges to addressing the immediate issues of price stability and energy supply certainty for Oregon families and businesses;

- c. Recommendations for bridging any potential gaps in Oregon's energy supply;

- d. Recommendations for short, middle and long-range strategies for meeting Oregon's future energy needs, including the costs of any required infrastructure improvements and the expected environmental and economic impact of each energy strategy;

- e. At least two alternative strategies for meeting Oregon's energy needs; and

- f. Any recommended statutory changes for legislative consideration and recommended budget items to be included in the Governor's budget.

7. On an ongoing basis, at the request of the Governor, the Council shall provide analysis and counsel on energy forecasting, energy transmission, energy price stability, renewable energy, alternative energy sources and energy efficiency.

8. The Oregon Department of Energy shall provide staff support to the Council. Other state agencies shall assist the Council upon request. The Council shall consult with national energy experts as appropriate.

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

Done at Salem, Oregon, this 17th day of December, 2008.

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



## EXECUTIVE ORDERS

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 08-27

#### DETERMINATION OF A STATE OF EMERGENCY IN MULTNOMAH AND COLUMBIA COUNTIES DUE TO SEVERE WINTER WEATHER

Pursuant to ORS 401.055, I find that severe winter weather including heavy snow, freezing rain, ice and damaging winds has created a threat to life safety and property in Multnomah and Columbia Counties. These conditions have resulted in road closures, stranded motorists, extreme cold temperatures, power outages and many areas of inaccessibility.

In Multnomah and Columbia counties, recent snow and ice storms have made a significant number of roads inaccessible to emergency vehicles or emergency related vehicles and the counties have not been able to obtain equipment locally to remove snow and ice from the roadways. The inability of emergency vehicles and emergency related vehicles to access people who are suffering from serious medical conditions creates immediate life, health and safety issues.

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

1. The Oregon Military Department's Office of Emergency Management shall implement the State's Emergency Operations Plan, and coordinate with state and local agencies impacted by this severe weather event.
2. The Oregon National Guard shall provide the necessary manpower and equipment necessary to respond to requests from Multnomah and Columbia counties received by Oregon Emergency Management to facilitate response to this storm event.

These findings were made verbally on December 22nd, 2008 at 3:30 p.m.

Done at Salem, Oregon this 22nd day of December, 2008.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 08-28

#### DETERMINATION OF A STATE OF EMERGENCY IN CLACKAMAS COUNTY DUE TO SEVERE WINTER WEATHER

Pursuant to ORS 401.055, I find that severe winter weather including heavy snow, freezing rain, ice and damaging winds has created a threat to life safety and property in Clackamas County. These conditions have resulted in road closures, stranded motorists, extreme cold temperatures, power outages and many areas of inaccessibility.

In Clackamas County, recent snow and ice storms have made a significant number of roads inaccessible to emergency vehicles or emergency related vehicles and the counties have not been able to

obtain equipment locally to remove snow and ice from the roadways. The inability of emergency vehicles and emergency related vehicles to access people who are suffering from serious medical conditions creates immediate life, health and safety issues.

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

1. The Oregon Military Department's Office of Emergency Management shall implement the State's Emergency Operations Plan, and coordinate with state and local agencies impacted by this severe weather event.
2. The Oregon Department of Transportation shall provide the necessary manpower and equipment necessary to respond to requests from Clackamas County received by Oregon Emergency Management to facilitate response to this storm event.

These findings were made verbally on December 23rd 2008 at 3:39 p.m.

Done at Salem, Oregon this 23rd day of December, 2008.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 08-29

#### ADMENDMENT TO DETERMINATION OF A STATE OF EMERGENCY IN ALL AREAS WHERE MILK DELIVERY IS AFFECTED BY SEVERE WINTER WEATHER

Pursuant to ORS 401.055, I find that the extreme weather conditions affecting many portions of our state have created an emergency situation slowing the delivery of milk due to road closures, waiting for tow trucks and other weather delays, frequently preventing drivers from completing their routes within the time limits prescribed by driver hours of service rules. Due to the nature of these weather delays, truck drivers spend most of their time on duty not driving, but waiting at road closures or for tow trucks where they are able to rest, not compromising safety of themselves or others.

In order to avoid milk spoilage that would require dumping of large quantities, I find it is necessary to suspend the hours of service rules as they apply to drivers operating trucks hauling bulk milk intrastate.

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

1. The hours of service rules adopted by OAR 740-100-0010(1), as they apply to drivers operating trucks hauling bulk milk intrastate from farm to dairy, and interplant between dairies, are hereby suspended for 10 days from the date of this proclamation or until further notice in all affected counties.

These findings were made verbally on December 24th, 2008 at 2:57 p.m.

Done at Salem, Oregon this 24th day of December, 2008.

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

# EXECUTIVE ORDERS

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 09-01

### DETERMINATION OF A STATE OF EMERGENCY IN CLACKAMAS COUNTY DUE TO SEVERE WINTER WEATHER, INCLUDING HEAVY RAIN, SNOW MELT, AND FLOODING

Pursuant to ORS 401.055, I find that severe winter weather including heavy rain, snow melt, and flooding has created a threat to life safety and property in Clackamas County. These conditions have resulted in road closures, stranded motorists, mudslides, landslides, extensive flooding, evacuation of homes, and many areas of inaccessibility.

In Clackamas County, recent heavy rains, snow melt, debris, and flooding have made a significant number of roads throughout Clackamas County, including roads in the cities of Sandy, Estacada, Damascus, Happy Valley, and Oregon City inaccessible to emergency vehicles or emergency related vehicles. The County has not been able to obtain equipment locally to remove the debris from the roadways. There are immediate life, health and safety issues caused by the inability of emergency vehicles and emergency related vehicles to access people who are suffering from serious medical conditions or isolated from standard services.

#### IT IS HEREBY ORDERED AND DIRECTED:

1. The Oregon Military Department's Office of Emergency Management shall implement the State's Emergency Operations Plan, and coordinate with state and local agencies impacted by this severe weather event.
2. The Oregon National Guard shall provide the necessary manpower and equipment required to respond to requests from Clackamas County received by Oregon Emergency Management to facilitate response to this storm event.
3. The Oregon Department of Transportation shall provide the necessary manpower and equipment required to respond to requests from Clackamas County received by Oregon Emergency Management or in place mutual aid agreements to facilitate response to this storm event.

These findings were made verbally on January 2, 2009 at 7:08 a.m.

Done at Salem, Oregon this 5th day of January, 2009.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 09-02

### TASK FORCE ON DISPROPORTIONALITY IN CHILD WELFARE

Oregon families must be treated with equal respect and dignity, especially when receiving services from Oregon's child welfare system. For years, state agencies have worked independently to reduce

disparity in services for minorities and to develop culturally competent and language-specific services for clients.

National studies have shown that children of color are not abused at higher rates than white children. Nevertheless, in Oregon, African-American and Native American children remain over-represented in the child welfare foster care system, as compared to the percentage of the population of African-American and Native American children in Oregon. Other children of color, such as Asian-American and Hispanic children, are under-represented when compared to the populations of those children in the state.

"Disproportionality" within the child welfare system refers to the difference in the percentage of children of a certain racial or ethnic group in the state as compared to the percentage of the children of the same group in the child welfare system.

"Disparity" within the child welfare system means unequal treatment when comparing a racial or ethnic minority to a non-minority. National research shows that children of color in foster care and their families are treated differently from—and often not as well as—white children and their families in the system. Disparate treatment can happen at many steps along the decision-making process within the child welfare system including reporting, investigation, substantiation and foster care placement.

Both national and local child welfare agencies support the need for researching the causes of disproportionality and implementing effective services to reduce disproportionality in the child welfare system. Although this is a national issue, very little has been done to effectively reduce disproportionate rates of children of color in foster care nationally.

The time has come for Oregon to develop a statewide, integrated approach to reducing disparate outcomes for children and families of color and Native American children and families who are involved with the child welfare system. This Order creates a Task Force charged with engaging in a cross-systems approach with multiple agencies working together to identify the factors that contribute to disproportionality and, more importantly, to develop clear strategies for change.

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

1. The Task Force on Disproportionality in Child Welfare (Task Force) is established.
2. The Task Force shall study the reasons for the percentage difference between the number of children of certain racial or ethnic backgrounds in the child welfare foster care system and the number of those children in the general population, and shall identify specific strategies to reduce racial disparities and the disproportionality index.
3. To that end, the Task Force shall consist of a maximum of 21 members, and a majority of those members shall represent minority populations, including but not limited to the racial and ethnic groups listed in ORS 430.347. The members shall be appointed as follows:
  - a. The President of the Senate shall appoint one member from among members of the Senate;
  - b. The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives;
  - c. One person representing a federally recognized Oregon Indian Tribal Child Welfare program, appointed by the Director of the Department of Human Services;

## EXECUTIVE ORDERS

d. One person representing the State Commission on Children and Families, appointed by the Director of the Department of Human Services;

e. One person representing the Oregon Youth Authority, appointed by the Director of the Department of Human Services;

f. One person representing the Refugee Child Welfare Advisory Committee, appointed by the Director of the Department of Human Services;

g. One person representing the Child Welfare Advisory Committee, appointed by the Director of the Department of Human Services;

h. One person representing the law enforcement community, appointed by the Director of the Department of Human Services;

i. One person representing the education community, appointed by the Director of the Department of Human Services;

j. One person representing a community mental health program or a drug or alcohol treatment program, appointed by the Director of the Department of Human Services;

k. Three individuals representing the general public, at least one of whom is African-American and one of whom is Native American, appointed by the Director of the Department of Human Services;

l. One person representing the Oregon Judicial Department, appointed by the Director of the Department of Human Services;

m. One person representing either the office of Public Defense Services or the perspective of an attorney whose practice includes the representation of parents or children in the juvenile dependency system, appointed by the Director of the Department of Human Services;

n. One person representing the Oregon University system, appointed by the Director of the Department of Human Services;

o. Three individuals representing Oregon child advocacy groups, appointed by the Director of the Department of Human Services; and

p. Two individuals of color who are or have been foster parents to a child or to children in the child welfare foster care system, appointed by the Director of the Department of Human Services.

4. The members of the Task Force shall serve at the pleasure of the appointing authority.

5. If the Task Force requires the assistance of any other executive branch agency of the State not named in this order, then such agency shall provide that assistance to the Task Force upon request.

6. In the course of its work, the Task Force may:

a. Set specific goals to reduce the disproportionality of minorities in the child welfare foster care system;

b. Study, assess and recommend strategies to enhance recruitment and retention efforts at the state and local levels to increase minority representation among foster parents, caseworkers, supervisors and managers in the child welfare system;

c. Collect and analyze data to better assess the current and future concerns regarding disproportionality of children of color and Native American children in the child welfare system; and

d. Address and make recommendations concerning the reduction of the disproportionality of children of color and Native American children in the child welfare foster care system.

7. In all of its work, the Task Force shall take into consideration lessons learned in other states and from Oregon promising practices that have been initiated at the local level.

8. The Task Force will elect one of its members to serve as a chairperson. The chair shall work with staff from the Children, Adults and Families Division of the Department of Human Services, to establish a work plan for the Task Force, appoint subcommittees as needed, and provide leadership and direction to the Task Force.

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

10. With the exception of the foster parent participants, the members of the Task Force shall not be entitled to the reimbursement of expenses or to the per diem provided in ORS 292.495(2). Foster parent participants may be reimbursed for travel expenses incurred in attending Task Force business pursuant to ORS 292.495(2), subject to availability of funds.

11. The Task Force shall submit a report, which may include recommendations for legislation as appropriate, to an interim committee of the Legislative Assembly related to human services no later than October 1, 2010.

12. This Order expires on December 31, 2010.

Done at Salem, Oregon, this 5th day of January, 2009.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

### EXECUTIVE ORDER NO. 09-03

#### CONNECTING OREGON'S VETERANS WITH SERVICES AND BENEFITS

On March 27, 2008, I executed Executive Order 08-08, creating the Governor's Task Force on Veterans Services. I charged the Task Force to review all Oregon veterans' policy and services and determine what works, what does not and how Oregon could enhance its services and benefits to veterans. On December 10, 2008, the Task Force presented me with its final report.

The Task Force's report gives us a road map on how to reach out to veterans across Oregon and connect them with the services they need. A key finding of the report is that in Oregon substantial amounts of federal aid are left unrealized. In fact, in Oregon, while 351,000 veterans are identified through the federal census, only 80,000 veterans are in the system and receiving some level of benefits. The first step in providing increased service to our veterans is identifying who they are and what they need.

To better identify our veterans and ensure that they receive the highest levels of service and benefits available, this Order directs all state agencies to query clients, customers, and program participants

## EXECUTIVE ORDERS

regarding their interest in learning more about veterans' benefits and services. By collecting this basic information, we can work to connect veterans and their families with available veterans' services and benefits, and improve our veterans' quality of life.

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

1. On or before January 1, 2010, all state agencies shall develop and implement a process to solicit information from clients, customers and program participants about their interest in learning more about veterans' benefits and services.
2. At a minimum, each state agency shall ensure that all applications for benefits, interest forms, and other electronic or written documents of initial exchange with Oregon's public are updated so that individuals are queried about their interest receiving information about veterans' benefits and services.
3. To ensure an efficient use of state resources, whenever possible, applications, forms and other electronic or written documents shall be updated with veterans' services and benefits questions in conjunction with other regularly scheduled updates, maintenance or revisions. Forms and documents containing veterans' services and benefits questions should be phased in to agency use to minimize cost.
4. All documents including veterans' services and benefits questions shall include a statement informing the responding individual that an affirmative answer will cause the agency to forward their contact information to the Oregon Department of Veterans' Affairs.
5. Agencies shall only request information regarding interest in veterans' services and benefits on a voluntary basis. Responses regarding interest in veterans service and benefit information shall not be required or used in any way by agencies in making decisions regarding hiring or the provision of services or benefits.
6. When an individual indicates an interest in receiving additional information about veterans' benefits or services, the individual's personal contact information, including name, address, telephone number and email address, if available, shall be captured and forwarded in a timely manner to the Oregon Department of Veterans' Affairs.
7. The Oregon Department of Veterans' Affairs shall contact individuals who have indicated an interest in receiving information about veterans' benefits and services and provide any information requested.
8. On or before January 1, 2011, the Department of Administrative Services shall conduct an audit of state agencies to measure

the level of compliance with this Order and recommend ways to improve data collection.

Done at Salem, Oregon this 15th day of January, 2009.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

### **EXECUTIVE ORDER NO. 09-04**

#### **DETERMINATION OF STATE OF EMERGENCY IN COLUMBIA, CLACKAMAS, TILLAMOOK, CLATSOP, LINCOLN, YAMHILL, POLK, BENTON, MARION AND WASCO COUNTIES DUE TO SEVERE WINTER WEATHER INCLUDING FLOODING, LANDSLIDES AND WIND**

Pursuant to ORS 401.055, I find that severe winter weather, including flooding, landslides and wind created a threat to life, safety and property in Columbia, Clackamas, Tillamook, Clatsop, Lincoln, Yamhill, Polk, Benton, Marion and Wasco Counties. Beginning December 31, 2008, and continuing, severe weather conditions caused flooding, landslides and erosion throughout these counties, resulting in significant damage to the state highway system. Current estimates of the damage to the highway system in these counties total \$3 million dollars, including damage to federal aid highways.

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

1. The Oregon Department of Transportation shall provide appropriate assistance and seek federal resources to effect repair and reconstruction of the federal aid highway system in Columbia, Clackamas, Tillamook, Clatsop, Lincoln, Yamhill, Polk, Benton, Marion and Wasco Counties.

Done at Salem, Oregon this 20th day of January, 2009.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE



## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP AT THE MEARS PROPERTY, BEAVERTON, OREGON

**COMMENTS DUE:** 5 pm, March 2, 2009

**PROJECT LOCATION:** 13725 SW Millikan Way, Beaverton, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" (CNFA) determination based on results of site investigation and remedial activities performed at the former Mears Property located on Millikan Way in Beaverton, Oregon. DEQ has determined that no further action is required because the site does not pose a risk that exceeds the acceptable risk level defined in ORS 465.315. This determination is conditioned on an institutional control agreement with Clean Water Services to ensure that any trench work or contaminated soil excavation is handled with proper health and safety precautions and that any removed soil is properly characterized and managed. The site will remain on the Confirmed Release List and the Inventory of Hazardous Substance Sites.

**HIGHLIGHTS:** The project site is located on Millikan Way on the south side of the Tektronix campus. The southern half of the current site building was built in 1959 and the northern half was built in 1968. Mears Electronic Controls, Cutler-Hammer, and Eaton Corporation used the building for the manufacture of electronic temperature controls until 1991 when operations ceased. GM Nameplate purchased the property in 1995 for use as a molded plastics facility. Soil and groundwater investigations at the site began in the 1990s and contamination was found to originate primarily with an underground solvent settling tank and piping at the northwest corner of the building. A groundwater plume of contamination extends from the settling tank area northward under the TriMet light rail line and an additional 300 feet to Beaverton Creek. The investigation concluded that there was a potential for migration of contaminants to Beaverton Creek. Prevention of further migration to the creek became the focus of remedial action objectives.

In March 2001, DEQ approved an enhanced bioremediation alternative for remedial action in the Record of Decision (ROD). Groundwater treatment began in August 2001 and was focused in two areas: 1) the area at the northwest corner of the building where the solvent tank had been located and 2) the Tektronix Tract D parcel located north of the light rail line. Groundwater treatment reduced contaminant concentrations near the former solvent tank source area to levels below the cleanup levels specified in the ROD. DEQ issued a partial no further action determination for the GM Nameplate property in 2005. Monitoring of contaminant concentration reductions continued at the Tract D property through 2008. Monitoring shows that the primary solvent TCE has been largely remediated and the late stage degradation product, vinyl chloride, is increasing. Surface water monitoring in Beaverton Creek has never detected any of the solvent compounds found in site groundwater. The potential for future migration of vinyl chloride or other contaminants to Beaverton Creek at concentrations of concern is considered very low. Other potential risk pathways were determined to be incomplete. DEQ concludes that environmental conditions at the site have been successfully remediated and do not pose an unacceptable risk to human health and the environment, and therefore, meet the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** DEQ's Staff Report for the Mears Property and other 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 Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Summary information and a copy of the Staff Report are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 1592 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1592 in the Site ID/Info column. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at [williams.robert.k@](mailto:williams.robert.k@)

[deq.state.or.us](mailto:deq.state.or.us). To be considered, DEQ must receive written comments by 5 pm on March 2, 2009. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the conditional "No Further Action" determination. In the absence of comments, DEQ will issue the No Further Action determination for the Mears Property.

**ACCESSIBILITY INFORMATION:** DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call DEQ's TTY number, 503-229-5471.

### CHANCE TO COMMENT ON A PROPOSED NO FURTHER ACTION DETERMINATION FOR THE NORTH UNIT OF THE FORMER J.O. OLSEN MANUFACTURING COMPANY IN EUGENE

Pursuant to ORS 465.320 and Oregon Administrative Rules 340-122-0465, Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further action be required for investigation or cleanup of soil and groundwater contamination at the North Unit of the former J. O. Olsen Manufacturing Company, located at 41 North Danebo Avenue, in Eugene, Oregon (the site).

The site was a former milling and woodworking plant which operated from 1923 to 1992. Prior to 1923, the site was used for agricultural purposes. Specialty Crates now occupies the buildings on the site. The primary contaminant of concern site is PCP and associated compounds. As part of the former milling operations, Olsen Manufacturing used a dip tank containing a PCP solution for surface treatment of finished wood products. Operations at the facility resulted in the spillage of the treatment solutions and subsequent contamination of surface and subsurface soils and groundwater.

Remedial actions at the site include a 1996 interim cleanup action completed in order to address PCP contamination in the former treatment area. PCP contaminated soils were excavated and stockpiled on the site. The stockpiled soil was placed on a bermed liner and was covered with plastic sheeting. In 2008, the soil stockpile was excavated and removed to a solid waste landfill. This action included the excavation of all soils within the remedial action area, and surface soils to a depth of 3 inches. Residual risk from PCP in on-site soils has been reduced to acceptable levels for occupational scenarios.

Low levels of PCP in groundwater remain on-site, however, PCP in groundwater has decreased significantly since the 1996 removal action was performed. PCP levels in groundwater are expected to continue declining. The site's water supply is served by the Eugene Water and Electric Board. Institutional controls prohibiting the extraction or use of groundwater on-site will be a component of the remedy augmenting the interim action.

The Locality of the Facility for the site consists of the property boundaries for the site.

DEQ proposes that the soil removals completed to date combined with the deed restrictions required by the easement and equitable servitude be accepted as the remedy for this site. Pending public comment, DEQ will grant a No Further Action letter.

Project documents for this site are available for public review at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene 97401. Contact the file specialist at (541) 686-7838 or 1-800-844-8467 (toll-free in Oregon) for an appointment. Please send written comments to Norman Read at the listed above address or via email at [read.norm@deq.state.or.us](mailto:read.norm@deq.state.or.us). DEQ must receive written comments by 5 p.m., March 2, 2009.



## OTHER NOTICES

### **CHANCE TO COMMENT ON A PROPOSED NO FURTHER ACTION DETERMINATION FOR THE SOUTH UNIT OF THE FORMER J.O. OLSEN MANUFACTURING COMPANY IN EUGENE**

Pursuant to ORS 465.320 and Oregon Administrative Rules 340-122-0465, Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further action be required for investigation or cleanup of soil and groundwater contamination at the South Unit of the former J. O. Olsen Manufacturing Company, located at 11 North Danebo Avenue, in Eugene, Oregon (the site).

The site was a former milling and woodworking plant which operated from 1923 to 1992. Prior to 1923, the site was used for agricultural purposes. Horizon Paints now occupies the buildings on the site. The primary contaminant of concern site is arsenic in soil. The source of the arsenic at the site is not known, but it does not appear to stem from the site.

DEQ authorized an interim remedial action measure (IRAM) which included the excavation of soils to a depth of 3 feet. This IRAM removed all soils above the agreed upon background arsenic concentration of 7 mg/kg within the upper 3 feet. The removal of the contamination will remove the source within the upper 3 feet. The excavation was backfilled with uncontaminated gravel and then graded. The remediated area will serve as a parking area for Site tenants. This action does not address deeper soils, including the hot spot soils present at depths greater than 3 feet below ground surface, nor does it address groundwater.

This removal action will be combined with institutional controls, which are deed restrictions and the Contaminated Media Management Plan. The combination of IRAM and institutional controls will reduce risk in the near term to potential receptors, such as on-site workers. The removal of contaminated soils on the site will eliminate potential contact with the contamination. The excavated soils have been transported to the lined, Subtitle D Riverbend landfill for disposal.

The Locality of the Facility for the site consists of the property boundaries for the site.

DEQ proposes that the soil removal completed to date combined with the deed restrictions required by the easement and equitable servitude be accepted as the remedy for this site. Pending public comment, DEQ will grant a No Further Action letter.

Project documents for this site are available for public review at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene 97401. Contact the file specialist at (541) 686-7838 or 1-800-844-8467 (toll-free in Oregon) for an appointment. Please send written comments to Norman Read at the listed above address or via email at [read.norm@deq.state.or.us](mailto:read.norm@deq.state.or.us). DEQ must receive written comments by 5 p.m., March 2, 2009.

### **APPROVAL OF REMEDIAL ACTIONS WEYERHAEUSER EXPORT SERVICES, COOS COUNTY, OREGON**

**PROJECT LOCATION:** 3050 Tremont St., North Bend, Oregon

**APPROVAL:** The Department of Environmental Quality (DEQ) has approved a series of measures undertaken by Weyerhaeuser to remediate contamination present at their former Export Services facility. The site is now owned by the Coquille Economic Development Corporation.

**HIGHLIGHTS:** Weyerhaeuser completed a number of studies, investigations, and soil removal actions related to soil and groundwater contaminated by a wood treatment chemical (pentachlorophenol) in and around the former Green Sort Building Area, with investigations conducted in the 1980s and early 1990s, soil removal actions conducted in the late 1990s, and post-removal-action groundwater monitoring conducted through October 2004. The investigations found that past interim removal actions taken to remediate site contamination, including capping pentachlorophenol-contaminated soils in the former Storage Shed Area beneath the RV Park Cap, have been successful in mitigating the effects of the

releases. A deed restriction will be put in place so that any residual-contaminated soils under the RV Park Cap will be managed in a manner protective of human health and the environment if they are ever disturbed in the future. A report outlining DEQ's Record of Decision is posted in DEQ's Environmental Cleanup Site Information (ECSI) database as explained below.

Summary information and a copy of the Record of Decision referenced above are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 527 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 527 in the Site ID/Info column.

Any questions concerning this project should be directed to Bill Mason, Project Manager, via email at [mason.bill@deq.state.or.us](mailto:mason.bill@deq.state.or.us), or by phone at (541) 687-7427.

### **APPROVAL OF REMEDIAL ACTIONS TAKEN AT SHORT MOUNTAIN LANDFILL LANE COUNTY, OREGON**

**PROJECT LOCATION:** 84777 Dillard Access Road, Eugene, Oregon

**APPROVAL:** The Department of Environmental Quality (DEQ) has approved a series of measures undertaken by Lane County to remediate groundwater contamination originating from the oldest area of the landfill.

**HIGHLIGHTS:** Short Mountain Landfill, located south of Eugene, Oregon, recently completed a site investigation and human health and ecological risk assessment undertaken in response to DEQ's solid waste permit requirements. Landfill related chemicals, primarily non-hazardous chemicals such as manganese, had previously been detected in groundwater monitoring wells around the landfill. The purpose of the investigations was to determine the extent of the landfill-related chemicals and whether those chemicals posed a risk to human health or the environment. The investigations found that preventive actions already taken, including capping, leachate collection, and landfill gas collection were successful in mitigating the effects of the chemicals.

Summary information and a copy of the Record of Decision report are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 848 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 848 in the Site ID/Info column.

Any questions concerning this project should be directed to Bill Mason, Project Manager, via email at [mason.bill@deq.state.or.us](mailto:mason.bill@deq.state.or.us) or by phone at (541) 687-7427.

### **PROPOSED DEED RESTRICTION FOR THE NEW CITY HALL SITE IN INDEPENDENCE**

**COMMENTS DUE:** 5 pm, March 2nd, 2009

**PROJECT LOCATION:** 400 South Main Street, Independence, OR

**PROPOSAL:** Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation to restrict groundwater use in order to issue a No Further Action determination for the New City Hall Site in Independence, OR (ECSI No. 5046).

**HIGHLIGHTS:** The New City Hall Site has been a water storage and distribution facility from 1892 through the early 1980s. The City purchased the site in the early 1980s and has used it for primarily for storage. In March 2008, prior to construction, the City's consultant conducted a geotechnical soil study and discovered oil contamination in two soil borings. A sample from one of the borings was submitted for soil testing. The sample result was above DEQ's level of concern. After the testing, the City asked DEQ to assist with collecting additional environmental samples to determine the source of contamination and if cleanup was necessary.

## OTHER NOTICES

Using funding from EPA, DEQ conducted a limited soil and groundwater investigation to determine the extent of oil and associated chemicals including metals, volatile organic compounds (VOCs), polynuclear aromatic compounds (PAHs), and polychlorinated biphenyls (PCBs).

In August 2008, DEQ collected soil samples from eight borings and groundwater samples from two borings. Contaminant concentrations in soil were below DEQ's level of concern and the site is safe for development. Most of the associated chemicals in groundwater were also at safe levels. However, some VOCs concentrations in groundwater were above DEQ's level of concern for drinking water use.

DEQ believes the VOCs may be coming from a nearby site where a dry cleaning business use to operate. While there were insufficient samples collected to confirm this assumption, the City took steps to prevent exposure by abandoning the on-site drinking water supply wells and will provide city water to the new city hall. Also, DEQ is requiring a deed restriction to not use groundwater.

**HOW TO COMMENT:** A staff report presenting details about the site investigation was prepared by DEQ, which supports the decision to require a deed restriction to not use groundwater. The staff report is available for review, electronically, by contacting the DEQ

project manager, Mary Camarata, at 541-687-7435 or by email at [camarata.mary@deq.state.or.us](mailto:camarata.mary@deq.state.or.us), or the report can be viewed in person at the DEQ Eugene office by appointment. The Eugene office address and contact information is presented to the right.

Comments on the proposed determination need to be received by the Eugene Office, attn: Mary Camarata, by 5 pm on March 2nd, 2009. Fax or email comments are acceptable.

**THE NEXT STEP:** Upon completion of the comment period, the comments will be addressed by DEQ. Once the comments have been adequately addressed, the DEQ may approve, modify, or deny the remedy (no groundwater use) for new city hall site.

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

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

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

### Board of Architect Examiners Chapter 806

**Rule Caption:** Board's Biennial Budget.

Date:	Time:	Location:
2-26-09	9 a.m.	OBAE Conf. Rm. 205 Liberty St. NE, #A Salem, OR

**Hearing Officer:** Kim Arbuckle

**Stat. Auth.:** ORS 671.120, 671.125 & 182.462

**Other Auth.:** ORS 183.705

**Stats. Implemented:** ORS 182.462 & 671.125

**Proposed Amendments:** 806-001-0003

**Last Date for Comment:** 2-26-09, Close of Hearing

**Summary:** To adopt the Board's 2009–2011 biennial budget, with an expenditure limit of \$846,500. A copy of the proposed budget and/or rule amendment is available on the Board's web site of [www.orbae.com](http://www.orbae.com) or by contacting the agency rules coordinator.

**Rules Coordinator:** Carol Moeller

**Address:** 205 Liberty Street NE, #A, Salem, OR 97301

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

### Columbia River Gorge Commission Chapter 350

**Rule Caption:** Amendments to Plan Amendments, Urban Area Boundary Revisions, and Economic Development Certification Rules.

Date:	Time:	Location:
3-10-09	9 a.m.	Discovery Center 5000 Discovery Dr. The Dalles, OR

**Hearing Officer:** CRGC Staff

**Stat. Auth.:** ORS 196.150

**Other Auth.:** RCW 43.97.015; 16 USC §§ 544b(f), 544d(h), 544i(c)

**Stats. Implemented:** ORS 196.150; RCW 43.97.015; 16 USC §§ 544b(f), 544d(h), 544i(c)

**Proposed Amendments:** 350-040-0020, 350-040-0040, 350-050-0020, 350-050-0060, 350-120-0040, 350-120-0050

**Last Date for Comment:** 3-9-09

**Summary:** These changes clarify that the Commission's consideration of applications to amend the Management Plan and revise urban area boundaries is a discretionary action, and specify that the Commission will determine, as part of its work planning, how many of these types of applications it will accept for review. As well, these changes will enable the Commission's executive director to make decisions on more economic development certifications instead of taking those certification decisions to the Commission for a hearing and vote.

**Rules Coordinator:** Nancy A. Andring

**Address:** Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672

**Telephone:** (509) 493-3323

### Commission for the Blind Chapter 585

**Rule Caption:** Financial Support for Funding Business Ventures; Equipment Policy.

**Stat. Auth.:** ORS 346.150 & 183.341

**Stats. Implemented:**

**Proposed Amendments:** 585-010-0310, 585-020-0005

**Last Date for Comment:** 2-20-09

**Summary:** Division 10 — Financial Support for Funding Business Ventures: Updates language to reflect current practice. Division 20 — Equipment Policy: Updates language to reflect current practice.

**Rules Coordinator:** Linda Mock

**Address:** Commission for the Blind, 535 SE 12th Ave., Portland, OR 97214

**Telephone:** (503) 673-1588

### Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

**Rule Caption:** Establishes the Oregon Educators Benefit Board policy for complaints and appeals for members.

Date:	Time:	Location:
2-24-09	1–2 p.m.	PEBB/OEBB Boardroom 1225 Ferry St. SE Salem, OR 97301

**Hearing Officer:** Denise Hall

**Stat. Auth.:** ORS 243.860–243.886

**Stats. Implemented:** ORS 243.864(a)

**Proposed Adoptions:** 111-080-0030

**Last Date for Comment:** 2-27-09

**Summary:** OAR 111-080-0030 establishes OEBB's policy for complaints and appeals for members.

**Rules Coordinator:** April Kelly

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

**Telephone:** (503) 378-6588

### Department of Agriculture Chapter 603

**Rule Caption:** The scientific name of the pathogen causing hop powdery mildew requires updating.

**Stat. Auth.:** ORS 561, 570.305

**Stats. Implemented:** ORS 561.190, 561.510–561.600 & 570.305

**Proposed Amendments:** 603-052-1020

**Last Date for Comment:** 2-21-09

**Summary:** The officially recognized scientific name of the pathogen causing hop powder mildew has changed to *Podosphaera macularis*. The proposed amendment updates OAR 603-052-1020, Quarantine against Mildew of Hops, to reflect name change.

**Rules Coordinator:** Sue Gooch

## NOTICES OF PROPOSED RULEMAKING

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

**Telephone:** (503) 986-4583

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**Rule Caption:** Updates the federal host list and eradication protocols in Oregon's regulations for *Phytophthora ramorum*.

**Stat. Auth.:** ORS 561.510, 561.560 & 570.305

**Stats. Implemented:** ORS 561.190 & 561.560

**Proposed Amendments:** 603-052-1230, 603-052-1250

**Last Date for Comment:** 2-21-09

**Summary:** The USDA Animal and Plant Health Inspection Service has updated their quarantine and official protocols for *Phytophthora ramorum*. The Oregon Department of Agriculture is proposing to amend our State regulations to harmonize with the federal changes. In both OAR 603-052-1230 and OAR 603-052-1250, the host and associated plant list will be updated to the May 5, 2008 version. Also, the Confirmed Residential Protocol and the Response Retail Nursery Protocol will be added to both state regulations.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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

**Rule Caption:** Updates, clarifies and streamlines rules regulating consumer finance loans and lenders.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-23-09	9 a.m.	Rm. 260

Labor & Industries Bldg.  
350 Winter St. NE  
Salem, OR

**Hearing Officer:** Richard Y. Blackwell

**Stat. Auth.:** ORS 725.185, 725.320, 725.505 & 725.625

**Other Auth.:** 2008 OL Ch. 19 § 20

**Stats. Implemented:** ORS 725.050, 725.060, 725.110, 725.120, 725.140, 725.145, 725.185, 725.190, 725.310, 725.315, 725.317, 725.330, 725.340, 725.360, 725.600, 725.605, 725.615 & 725.622

**Proposed Adoptions:** 441-730-0165, 441-730-0271, 441-730-0272

**Proposed Amendments:** 441-730-0010, 441-730-0015, 441-730-0025, 441-730-0030, 441-730-0050, 441-730-0070, 441-730-0080, 441-730-0100, 441-730-0110, 441-730-0120, 441-730-0150, 441-730-0170, 441-730-0200, 441-730-0205, 441-730-0210, 441-730-0250, 441-730-0255, 441-730-0275, 441-730-0280, 441-730-0310, 441-730-0320

**Proposed Repeals:** 441-730-0270

**Last Date for Comment:** 3-2-09, 5 p.m.

**Summary:** In 2007, the Legislature adopted HB 2871 revising allowable interest and fees for both conventional consumer finance loans and short-term loans made by payday and title lenders. The proposed rules remove provisions that are now addressed in statute and make changes to reflect the new laws. They also include updates to address internet-based activities, clarify consumer protections, address revisions requested by the consumer finance industry, and correct duplicative rules within the section.

**Rules Coordinator:** Shelley Greiner

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

**Telephone:** (503) 947-7484

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### Department of Corrections Chapter 291

**Rule Caption:** Release of Public Information.

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

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

**Proposed Amendments:** 291-039-0010, 291-039-0015

**Last Date for Comment:** 2-25-09

**Summary:** These rule amendments are necessary to protect the confidentiality and integrity of DOC information and make clear to employees their obligation to protect and keep secure the Department's information assets when releasing public information regarding DOC inmates and offenders.

**Rules Coordinator:** Janet R. Worley

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

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

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**Rule Caption:** Employee Access to Inmate and Offender Files.

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

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

**Proposed Amendments:** 291-070-0120

**Last Date for Comment:** 2-25-09

**Summary:** This rule amendment is necessary to protect the confidentiality and integrity of inmate/offender records and make clear to employees their obligation to protect and keep secure the Department's information assets and public information when accessing inmate/offender files.

**Rules Coordinator:** Janet R. Worley

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

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

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### Department of Environmental Quality Chapter 340

**Rule Caption:** This rulemaking increases water quality permit fees by 3% to address increasing permit program costs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-18-09	6 p.m.	DEQ — Bend 475 NE Bellevue, Suite 110 Conference Rm.
2-24-09	6 p.m.	DEQ — Medford 221 Stewart Ave., Suite 201 Large Conference Rm.
2-25-09	6 p.m.	DEQ — Portland 811 SW Sixth Ave., 10th Flr. Rm. EQC A Portland, OR

**Hearing Officer:** Chris Clipper, DEQ

**Stat. Auth.:** ORS 468.020, 468.065 & 468B.035

**Other Auth.:** 2007 OL Ch. 696 (SB 737)

**Stats. Implemented:** ORS 468.065, 468B.051 & 2007 OL Ch. 696 (SB 737)

**Proposed Amendments:** 340-045-0075

**Last Date for Comment:** 3-2-09, 5 p.m.

**Summary:** This proposal to revise the Oregon Administrative Rules will increase water quality permit fees. DEQ proposes to increase fees for all National Pollution Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permits by 3% to address increased water quality permit program costs. WPCF-Onsite permits are included in the proposed fee increase. Suction dredge permits covered by General Permit 700-PM are not included in the proposed fee increase.

To submit comments or request additional information, please contact Chris Clipper at the Department of Environmental Quality (DEQ) at [wgfeerule@deq.state.or.us](mailto:wgfeerule@deq.state.or.us), at (503) 229-5656; toll free in Oregon at 800-452-4011, ext. 5656; by fax (503) 229-6037, or visit DEQ's website at <http://www.deq.state.or.us/news/publicnotices/PN.asp>

**Rules Coordinator:** Larry McAllister

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

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



# NOTICES OF PROPOSED RULEMAKING

## 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.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-23-09	10 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 118.537, 409.050, 410.070, 411.042, 411.050, 411.060, 411.070, 411.105, 411.111, 411.117, 411.700, 411.816, 412.006, 412.014, 412.049, 412.124 & 414.042

**Other Auth.:** 7 USC 2012; 7 USC 2014; 7 USC 2015(c); 7 USC 2017; 42 USC 602(a); 42 USC 1382c(f); 7 CFR 273.10(e); 45 CFR Parts 98 & 99; 45 CFR 260.31; PL 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009.

**Stats. Implemented:** ORS 118.537, 410.070, 411.042, 411.060, 411.070, 411.105, 411.117, 411.122, 411.620, 411.640, 411.690, 411.700, 411.816, 411.825, 412.006, 412.014, 412.049, 412.124 & 414.042

**Proposed Amendments:** 461-001-0000, 461-110-0350, 461-110-0370, 461-120-0125, 461-135-1175, 461-135-1230, 461-135-1250, 461-140-0040, 461-145-0455, 461-145-0460, 461-145-0580, 461-160-0060, 461-160-0410, 461-160-0550, 461-160-0551, 461-165-0060, 461-165-0180, 461-165-0410, 461-165-0420, 461-170-0011, 461-170-0101, 461-170-0102, 461-170-0103, 461-170-0104, 461-170-0150, 461-170-0160, 461-175-0280, 461-180-0006, 461-180-0070

**Last Date for Comment:** 2-26-09, 5 p.m.

**Summary:** OAR 461-001-0000 about Definitions for Chapter 461 is being amended to define the term "branch office".

OAR 461-110-0350 about the composition of filing groups in the Employment Related Day Care (ERDC) program is being amended to clarify that the term spouse includes persons who are not legally married to each other, but represent themselves to the community as being married or as domestic partners and they share living expenses and household duties.

OAR 461-110-0370 about Food Stamp (FS) program filing groups is being amended to revise who may form a separate filing group, who must be included, and who may be included in the filing group. The rule is being amended to state an individual who is elderly, blind, or has a disability and lives in federally subsidized housing may form a separate filing group. The rule is also being amended to state that a spouse in the same facility as a resident of an alcohol or drug treatment program may be in a separate filing group, but the child of a resident must be in the same filing group. The rule is also being amended to state that residents of commercial boarding houses and ineligible students are excluded from the FS filing group.

OAR 461-120-0125 about the alien status eligibility requirements for all programs except Refugee is being amended to extend the eligibility time frame for Afghani Special Immigrants for Food Stamp (FS) benefits from September 30, 2008 to September 30, 2009. This rule is being amended to make the changes in the temporary rule permanent.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to state that to be eligible for SFDNP the Department must receive the client's letter of interest no later than September 15 of the given year.

OAR 461-135-1230 about benefits in the Temporary Assistance - Domestic Violence Survivors (TA-DVS) program is being amended to state that payments are used to address specific needs related to the client's domestic violence situation and are not used for ongoing or recurrent needs. This rule is also being amended to update the description of how payments are issued.

OAR 461-135-1250 about specific client eligibility and participation requirements in the Post-TANF program is being amended to make permanent a temporary rule providing that effective February

1, 2009 the monthly Post-TANF benefit amount will be \$100.00 (reduced from \$150.00). This rule is also being amended to state that a client is no longer eligible for Post-TANF benefits when the client does not meet federal JOBS participation requirements due to loss of employment, reduced work hours and the client chooses not to participate in required JOBS activities, or reduced JOBS activity hours without good cause that when combined with work hours does not meet the federal JOBS participation requirements.

OAR 461-140-0040 about determining the availability of a client's income is being amended to indicate that in the Employment Related Day Care (ERDC) program income is considered not available to the client when the client is a victim of domestic violence, the income is controlled by the client's abuser, and the abuser is not in the client's filing group.

OAR 461-145-0455 about federal Reception and Placement Grants and how they are treated in the Department's public assistance, medical and Food Stamp (FS) programs is being amended to state that in the FS program the Department treats these grants as unearned income when paid directly to a FS household and an excluded in-kind payment when paid directly to a provider.

OAR 461-145-0460 about how client funds from the sale of a resource are treated in the Department's public assistance, medical, and Food Stamp (FS) programs is being amended to state the Department treats income received on a regular basis from the sale of a home in the FS program as unearned income.

OAR 461-145-0580 about how Veterans Benefits are treated in the Department's public assistance, medical, and Food Stamp (FS) programs is being amended to state that in the FS program the Department treats Aid and Attendance payments as unearned income and remaining benefits are counted unless excluded by another rule.

OAR 461-160-0060 about the use of rounding when calculating benefit amounts in the Department's programs is being amended to simplify the rounding calculations when determining Food Stamp eligibility and benefit amounts to the minimal federal requirements.

OAR 461-160-0410 about the treatment of income and income deductions in the Food Stamp (FS) program when a group includes ineligible or disqualified members is being amended to treat all qualified non-citizens the same when their alien status does not automatically meet the FS program requirement.

OAR 461-160-0550 about income deductions for non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) clients in the community when no children are in the household group is being amended to restate that when adjusted income of the applicant is less than the one-person standard, the countable income used in determining adjustable income of an ineligible spouse is the difference between the SSI standard for an individual and that for a couple.

OAR 461-160-0551 about income deductions for non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) clients in the community when children are in the household group is being amended to make permanent a temporary rule change that removed language that requires the rule to be updated and changed every year when federal SSI program standards change.

OAR 461-165-0060 about the minimum benefit amount in the Refugee, Food Stamp (FS), and Temporary Assistance to Needy Families (TANF) programs is being amended to make permanent a temporary rule change stating that in the FS program eligible one- and two-person benefit groups receive a minimum monthly FS allotment of eight percent of the Thrifty Food Plan (TFP) for a one-person household, as determined annually by the United States Department of Agriculture, Food and Nutrition Service.

OAR 461-165-0180 about eligibility for payment as a child care provider through the Department's self sufficiency programs is being amended to restate the eligibility requirements for child care providers. This rule is being amended to restate: when the Department must approve a child care provider to receive payment, when ineligibility for payment may result, what the provider must submit to the Department, the requirements the provider must meet, what each subject individual must do, and what each provider must do.



## NOTICES OF PROPOSED RULEMAKING

This rule is also being amended to state that all subject individuals must allow the Department to conduct criminal history checks through the Oregon State Police and the Federal Bureau of Investigation, and that to be approved the subject individual cannot have a history indicating substantial risk to the well-being to children in the care of the provider. This rule is also being amended to state that certified foster parents must obtain written approval from their certifier or certifier's supervisor to become a child care provider eligible to be paid by the Department.

OAR 461-165-0410 about criminal history disqualifying a child-care provider from receiving payments from the self sufficiency programs of the Department is being amended to state that a subject individual charged with or arrested for certain violent or sexual crimes is presumed to be likely to engage in conduct posing a significant risk to a client, the Department, or a vulnerable individual and that this presumption may result in a child care provider being found ineligible to receive payment from the Department. This rule is also being amended to correct cross-references to other rules.

OAR 461-165-0420 about child protective service histories disqualifying a childcare provider from receiving payments from the self sufficiency programs of the Department is being amended to state: what information the Department may use to determine if a child care provider may be ineligible to receive payment from the Department, that a provider's failure to disclose all requested information results in a finding of failed, and that the Department may find a provider eligible for payment even when there is a potentially disqualifying history of behavior if the behavior is unlikely to be repeated and children's well being is not jeopardized. This rule is also being amended to correct an inaccurate cross-reference to another rule.

OAR 461-170-0011 about changes a client must report to the Department is being amended to state that a client in the Employment Related Day Care (ERDC) program who is not participating in the Simplified Reporting System (SRS) must report changes within ten days of occurrence and that the changes that must be reported are a change in: child care provider, employment status, mailing address or residence, membership of the filing group, source of income expected to continue. This rule is also being amended to state that when a client in the Employment Related Day Care (ERDC) program is in the Simplified Reporting System (SRS) must report changes by the tenth day of the month following the month of occurrence and that the changes that must be reported are monthly income exceeding the Food Stamp countable income limit, a change in mailing address, a change in child care provider, loss of employment, or the spouse of the caretaker moves in.

OAR 461-170-0101 about the Simplified Reporting System (SRS) for the Employment Related Day Care (ERDC) and Food Stamp (FS) programs is being amended to clarify that ERDC and FS companion cases may participate in SRS.

OAR 461-170-0102 about the required Interim Change Report that clients in the Simplified Reporting System (SRS) are required to submit is being amended to indicate that there is no mandatory six month report form required when the household has no earned income and all adult members are elderly or have a disability. This rule also is being amended to state this rule also applies to Employment Related Day Care (ERDC) clients when a client's case is also a companion Food Stamp (FS) case.

OAR 461-170-0103 about what actions result from changes in household circumstances reported by clients assigned to the Simplified Reporting System (SRS) is being amended to extend the rule to Employment Related Day Care (ERDC) clients when a client's case is also a companion Food Stamp (FS) case.

OAR 461-170-0104 about the effect on a client's benefits when a client assigned to SRS does not submit a complete Interim Change Report is being amended to extend this rule to Employment Related Day Care (ERDC) clients when a client's case is also a companion Food Stamp (FS) case.

OAR 461-170-0150 about Anticipating with Periodic Review (APR) for clients in the Employment Related Day Care (ERDC) program is being amended to revise the length of the APR certification periods.

OAR 461-170-0160 about when a re-application form is considered complete or not received from a client in the Employment Related Day Care (ERDC) program is being amended to state that ERDC clients must submit a re-application form at the end of the Anticipating with Periodic Review (APR) certification period before eligibility can be determined and a new APR certification period can be established.

OAR 461-175-0280 about the type of notice sent to a client when the client fails to submit a required report and the consequences to the client of not submitting that report when the client is participating in Anticipating with Periodic Review (APR), the Monthly Reporting System (MRS), or the Simplified Reporting System (SRS) is being amended to state that a client failing to submit in a timely manner a required Interim Change Report or Employment Related Day Care (ERDC) re-application form is sent a continuing benefit decision notice.

OAR 461-180-0006 about the effective date of benefit amounts due to changes in household circumstances for Employment Related Day Care (ERDC) and Food Stamp (FS) program clients in the Semiannual Reporting System (SRS) is being amended to state the correct name for SRS is the Simplified Reporting System, state that this rule applies to ERDC and FS clients, and clarify the effective date for a decrease in benefits.

OAR 461-180-0070 about the effective date for an initial month of benefits is being amended to clarify the rule is not limited to cash benefits. This rule is also being amended to state how to determine the effective starting date for benefits for all ERDC clients, not just ERDC-BAS clients.

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

**Rules Coordinator:** Annette Tesch

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

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

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**Rule Caption:** Changing OARs regarding the Refugee Case Services Project (RCSP) and New Arrival Employment Services (NAES) programs.

**Date:**  
2-23-09

**Time:**  
8:30 a.m.

**Location:**  
Rm 254, 500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 411.060, 411.116 & 411.135

**Other Auth.:** 45 CFR Part 400

**Stats. Implemented:** ORS 411.060, 411.070, 412.006, 412.049 & 414.025

**Proposed Amendments:** 461-193-0000, 461-193-0010, 461-193-0031, 461-193-0042, 461-193-0130, 461-193-0185, 461-193-0190, 461-193-0221, 461-193-0240, 461-193-0246, 461-193-0470, 461-193-0560, 461-193-0650, 461-193-0670, 461-193-0690, 461-193-0890, 461-193-0940, 461-193-0960, 461-193-1200, 461-193-1230  
**Proposed Repeals:** 461-193-0001, 461-193-0005, 461-193-0007, 461-193-0016, 461-193-0026, 461-193-0040, 461-193-0046, 461-193-0610, 461-193-0640, 461-193-0660, 461-193-1310

**Last Date for Comment:** 2-26-09, 5 p.m.

**Summary:** OAR 461-193-0000 about client rights is being amended to specify that the rule covers rights in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs and revise the descriptions of the description of the rights covered by the rule.

OAR 461-193-0001 about the scope and precedence of Refugee Project rules is being repealed because the other rule changes in this division of rule make this rule unnecessary.

## NOTICES OF PROPOSED RULEMAKING

OAR 461-193-0005 an overview of Refugee program projects is being repealed because the current language discusses Department policy, funding and budgeting decisions and priorities, and other general information not necessary to administering Department programs via administrative rules.

OAR 461-193-0007 about project services delivery requirements is being repealed because its requirements are contractual in nature and appear in contracts between the Department and third-party service providers.

OAR 461-193-0010 about client responsibilities in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to revise the required responsibilities of a client and the client's spouse while participating in the RCSP and NAES programs. This rule is also being amended to remove language that appears in other rules, including employment plan requirements.

OAR 461-193-0016 about delegating authority for Refugee program project administration is being repealed because it is not to cover these topics in an administrative rule.

OAR 461-193-0026 about initial orientations for applicants in Refugee projects is being repealed because the rule covers information the Department may require third-party contractors to provide to clients and is now covered in the contracts between the Department and the contractors.

OAR 461-193-0031 about the requirements in the Refugee Case Services Project (RCSP) program is being amended to revise the eligibility requirements for clients in the RCSP program, including: meeting all TANF program eligibility requirements, meeting the alien status requirement, residing in certain Oregon counties, how to determine the first month of residence in the United States, age requirements, the prohibition against being a full-time student, and the treatment of newborn clients.

OAR 461-193-0040 about the responsibilities of employees of Refugee project contractors is being repealed because the rule covers responsibilities the Department may require third-party contractors to require of their staff and is now covered in the contracts between the Department and the contractors.

OAR 461-193-0042 about the employment plan and employment requirements for clients in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to revise the requirements of a program employment plan, including how the plan is created, when the plan may be modified, what the plan encompasses, client reporting requirements, complaint resolution, when a plan goes into effect, and how a plan is communicated to a client.

OAR 461-193-0046 about Refugee program employment projects and services is being repealed to remove unnecessary language concerning services the Department may or may not provide.

OAR 461-193-0130 about definitions used in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to revise definitions and to remove redundant definitions of terms defined in other Chapter 461 rules.

OAR 461-193-0185 about treatment of client assets (income and resources) in determining eligibility and benefit amounts in the Refugee Case Services Project (RCSP) program is being amended to state that the rules that apply in other programs in Chapter 461 apply in the RCSP program to determine the countable assets of a client.

OAR 461-193-0190 about applying for benefits in the Refugee Case Services Project (RCSP) program is being amended to revise the requirements of the application process for the RCSP program, including the information the applicant must supply, ongoing reporting requirements, when an application is considered complete, and when a new application is not required.

OAR 461-193-0221 about training activities in the New Arrival Employment Services (NAES) and Refugee Case Services Project

(RCSP) programs is being amended to make the rule consistent with current Department policies and practices.

OAR 461-193-0240 about the clients exempt from participating in New Arrival Employment Services (NAES) program activities is being amended to revise the exemptions from NAES participation or disqualification, including pregnancy-related issues, caring for a family member with a disability, being elderly, receiving SSI, undue hardship, and voluntary participation.

OAR 461-193-0246 about employment and training incentive payments in the New Arrival Employment Services (NAES) program is being amended to restate the requirements for a NAES client to receive an employment or training incentive benefit, and the limitation on the number incentives a client may receive for each type of incentive.

OAR 461-193-0470 about who makes eligibility decisions in the Refugee Case Services Project (RCSP) program is being amended to state that the State Refugee Coordinator may have a designee may make eligibility decisions in the RCSP program.

OAR 461-193-0560 about payment standards in the Refugee Case Services Project (RCSP) program is being amended to state that in the RCSP program the cash assistance payment standard amount for a client is the sum total of the TANF program payment standard plus the TANF program Cooperation Incentive.

OAR 461-193-0610 about the treatment of a client's newborn child in the Refugee Case Services Project (RCSP) program is being repealed because its provisions are now covered by other rules in this division.

OAR 461-193-0640 about client reporting requirements via the monthly client information report (MCIR) is being repealed because its provisions about client reporting requirements are now covered by other rules in this division.

OAR 461-193-0650 about countable assets of a client in the Refugee Case Services Project (RCSP) program is being amended to state what rules in Chapter 461 are used to determine the treatment of assets.

OAR 461-193-0660 about which resources and income are excluded when determining eligibility and benefit levels in the Refugee Case Service Project (RCSP) program is being repealed because its provisions about excluded resources and income are covered in other rules in this chapter of rules.

OAR 461-193-0670 about payment controls in the Refugee Case Services Project (RCSP) program is being amended to state that the State Refugee Coordinator's designee may make final eligibility determinations.

OAR 461-193-0690 about overpayments to clients in the Refugee Case Services Project (RCSP) program is being amended to state that the State Refugee Coordinator's designee may approve overpayment repayment schedules and indicate that a client's cash repayment of an overpayment to the client must be made according to the procedure determined by the State Refugee program.

OAR 461-193-0890 about good cause for non-cooperation with an employment plan in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to revise when a client has good cause for not complying with a requirement of an employment plan, including: exposure to adverse risk, undue hardship, care for a household member with a disability, union and strike issues, religious objections to union membership, transportation issues, issues related to pregnancy, and discriminatory employment practices.

OAR 461-193-0940 about disqualifications and penalties in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to revise the conditions under which a client may be disqualified from program benefits and the progressive penalties for program disqualification, including a second violation causing removal of a client from the need group and a third violation resulting in loss of cash assistance for the entire case.

## NOTICES OF PROPOSED RULEMAKING

OAR 461-193-0960 about a client re-engaging by demonstrating cooperation in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to revise the requirements a client must meet to achieve re-engagement in the RCSP and NAES programs after being disqualified from those programs, including: what is reviewed under the re-engagement process, who may initiate the process, when the process is appropriate, when the process leads to disqualification, and when the process terminates.

OAR 461-193-1200 about the cooperation requirements for clients in the New Arrival Employment Services (NAES) program is being amended to revise these requirements.

OAR 461-193-1230 about how a client can have the Department remove a disqualification in the New Arrival Employment Services (NAES) and Refugee Client Services Project (RCSP) programs is being amended to revise the requirements about how to remove a disqualification and to indicate when a disqualification ends.

OAR 461-193-1310 about client participation requirements in the New Arrival Employment Services (NAES) program is being repealed because its provisions are covered by OAR 461-193-1200.

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

**Rules Coordinator:** Annette Tesch

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

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

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

**Rule Caption:** Amend OAR 582-050-0000 relating to referrals and applications.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-19-09	3-5 p.m.	DHS Human Services Bldg. RM. 137D 500 Summer St. NE, 1st Flr. Salem, OR 97301

**Hearing Officer:** Sherri Rita

**Stat. Auth.:** ORS 344.530

**Stats. Implemented:** ORS 344.570

**Proposed Amendments:** 582-050-0000

**Last Date for Comment:** 3-2-09

**Summary:** OAR 582-050-0000 addresses the processing of referrals and applications for services. In order to conform state rules to the federal rules governing vocational rehabilitation services, the amendments will clarify the obligations of the Office of Vocational Rehabilitation with regard to referrals and applications, set forth the requirements that must be met before an application will be deemed submitted, and affirm the obligation to ensure application materials are available on a statewide basis.

**Rules Coordinator:** Sherri L. Rita

**Address:** Department of Human Services, Children, Adults and Families Division: Vocational Rehabilitation Services, 500 Summer St. NE, E-87, Salem, OR 97301

**Telephone:** (503) 945-6695

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**Rule Caption:** Amend OARs 582-001-0003 through 582-001-0010 and 582-100-0040 relating to Vocational Rehabilitation Services.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-19-09	3-5 p.m.	DHS Human Services Bldg., RM. 137D 500 Summer St. NE, 1st Flr. Salem, OR 97301

**Hearing Officer:** Sherri Rita

**Stat. Auth.:** ORS 183.332, 344.530 & 344.540

**Stats. Implemented:** ORS 344.530, 344.550, 344.560, 344.570, 344.590, 183.335, 183.341, 344.511-344.690 & 344.710-344.730

**Proposed Amendments:** 58-001-0003 – 582-001-0010, 582-100-0040

**Last Date for Comment:** 3-2-09

**Summary:** The Office of Vocational Rehabilitation Services (OVRs) of the Department of Human Services is streamlining and clarifying select definitions for Vocational Rehabilitation services and making housekeeping amendments. The proposed permanent rules will:

- Correct citations to other OARs and OVRs statutory authority in OARs 582-001-003 through 582-001-0010 and 582-100-0040.

- Amend 582-00-0010(22) defining “Individual with a most significant disability” to remove reference to supported employment is former subsection (a).

- Amend 582-001-0010(23) defining “Individual with a significant disability” to remove reference to trial work and extended evaluations in subsection (b)(A) and to clarify that only one functional capacity limitation is required to be considered an individual with a significant disability.

- Streamline the definitions for personal assistance, post-employment and transition services, and transportation.

- Amend 582-100-0040 relating to Order of Selection priority levels, clarifying that only two functional capacity limitations are required to qualify for Priority Two status.

**Rules Coordinator:** Sherri L. Rita

**Address:** Department of Human Services, Children, Adults and Families Division: Vocational Rehabilitation Services, 500 Summer St. NE, E-87, Salem, OR 97301

**Telephone:** (503) 945-6695

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

**Rule Caption:** Administrative Rulemaking.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-17-09	2:30 p.m.	Human Services Bldg. 500 Summer St. NE Rms. 137AB Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 183.341 & 409.050

**Stats. Implemented:** ORS 183.325-183.410

**Proposed Repeals:** 411-001-0010

**Last Date for Comment:** 2-23-09, 5 p.m.

**Summary:** The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to repeal OAR 411-001-0010 related to administrative rulemaking. SPD will be adhering to the DHS procedural rules related to administrative rulemaking in OAR chapter 407, division 001.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 945-6398

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**Rule Caption:** Inactive and Provisional Licenses for Residential Care and Assisted Living Facilities.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-17-09	3:30 p.m.	Human Services Bldg. 500 Summer St. NE Rms. 137AB Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070 & 443.450

**Stats. Implemented:** ORS 443.400-443.455 & 443.991

**Proposed Adoptions:** 411-054-0125

**Last Date for Comment:** 2-23-09, 5 p.m.



## NOTICES OF PROPOSED RULEMAKING

**Summary:** The Department of Human Services, Seniors and People with Disabilities (SPD) is proposing to permanently adopt OAR 411-054-0125, relating to inactive and provisional licenses for residential care and assisted living facilities. OAR 41-054-0125 was temporarily adopted on September 18, 2008.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 945-6398

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**Department of Justice**  
**Chapter 137**

**Rule Caption:** Clarifies criteria in paternity establishment/disestablishment, processing modifications and using Federal Parent Locator Service.

**Stat. Auth.:** ORS 25.265 & 180.345

**Stats. Implemented:** ORS 25.080, 25.085, 25.245, 25.265, 109.070, 109.252, 416.430 & ORCP 7D

**Proposed Amendments:** 137-055-1320, 137-055-3020, 137-055-3080, 137-055-3100, 137-055-3460

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

**Summary:** OAR 137-055-1320 is being amended to reflect changes to federal law. Those changes require "authorized individuals" (for example, a parent or agent of a child) who submit requests for Federal Parent Locator Service information (in those instances where information is sought to establish paternity or support, or modify or enforce a support order) to attest that they are who they purport to be, that they will use the information for the purpose requested, and that they will protect the information as confidential information.

OAR 137-055-3020 is being amended to clarify that the rule applies only to those cases in which the administrator of the Division of Child Support initiates legal proceedings and not to all children in Oregon. Additionally, when parentage testing is completed and a party is a recipient of Title IV-A or Title XIX aid under the state's plan, a parentage test judgment may not be entered against that party. The rule is being amended to clarify that fact.

OAR 137-055-3080 is being amended to clarify that the administrator of the Division of Child Support will proceed against a third party, self-alleged father when there is a child born to married parents but the presumption in the law allows a challenge.

OAR 137-055-3100 is being amended to clarify that the administrator of the Division of Child Support will not enter an order establishing paternity for failure to comply with parentage tests when there is a presumption of paternity under the law.

OAR 137-055-3460 is being amended to clarify the manner of process service the program will use in limited circumstances when modifications are required but obligees cannot be found. The proposed amendment comports with current law, and allows the program to use due diligence in attempting to locate the obligees, and if unable to locate, complete process service by mail at the last-known address.

**Rules Coordinator:** Vicki Tungate

**Address:** 494 State Street, Suite 300 Salem, OR 97301

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

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

**Rule Caption:** DMV to Invalidate and Return Surrendered Driver License, Driver Permit or Identification Card upon Issuance.

**Stat. Auth.:** ORS 184.616, 184.619 & 802.010

**Stats. Implemented:** ORS 807.024, 807.045, 807.060, 807.150, 807.160, 807.310, 807.540, 807.550 & 807.580

**Proposed Adoptions:** 735-062-0096

**Last Date for Comment:** 2-23-09

**Summary:** Pursuant to ORS 807.024, DMV mails an applicant's permanent driver license, driver permit or identification (ID) card

from a central location. If the applicant is renewing or replacing an Oregon driver license, driver permit or ID card, or currently holds an out-of-state license or ID card, that card must be surrendered at the time of application. An interim card is issued, which the applicant may use until the permanent one is received, and DMV destroys the surrendered card. Most people receive their new card in the mail a few days later, but the interim card is printed on paper stock with few security features and is frequently not accepted as photo identification for business transactions and security screening at airports. This has made it difficult for some people to prove their identity while waiting for their new card to arrive in the mail.

According to research into states using a central issuance process, 15 out of 16 motor vehicle agencies invalidate the person's surrendered driver license, driver permit or identification card by hole-punching, clipping a corner, or some other method. These states return the card to the person to use for identification purposes prior to receiving the new card in the mail. Although not valid for driving or official state identification, businesses and security screeners are more likely to accept a state-issued license, permit or ID card even if it is invalidated, because it contains more security features to establish the person's identity.

DMV proposes to adopt OAR 735-062-0096 to allow DMV to invalidate a surrendered driver license, driver permit or identification card by hole-punching the card and then return it to the applicant when an interim card or applicant temporary permit is issued. The rule also requires the person to destroy the invalidated driver license, driver permit or identification card once the permanent card is received or if the person's identification card or driving privileges are canceled, suspended or revoked.

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

**Rules Coordinator:** Lauri Kunze

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

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

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**Rule Caption:** Adds provision to designate ODAC member to represent dealers of motorcycles, mopeds or all-terrain vehicles.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010 & 802.370

**Stats. Implemented:** ORS 802.370

**Proposed Amendments:** 735-150-0005

**Last Date for Comment:** 2-23-09

**Summary:** OAR 735-150-0000 establishes the Oregon Dealer Advisory Committee (ODAC) as the advisory committee required under ORS 802.370. The rule includes provisions for the designation of members, committee member terms and the appointment and interest of member representation.

ODAC membership currently consists of individuals who represent: franchise dealers of new vehicles; dealers of used vehicles; Oregon dismantlers; the interests of the general public; recreational vehicle dealers; vehicle dealership office management interests; auto auctions, and Oregon towing businesses.

Oregon has recently experienced a dramatic increase in the sales of motorcycles, mopeds and all-terrain vehicles. At the suggestion of ODAC, DMV proposes to amend OAR 735-150-0005 to add a provision for the appointment of an individual who represents dealers of motorcycles, mopeds or all-terrain vehicles. DMV also proposes to delete the reference to appointment of a realtor to the committee because this membership position represents the sale of manufactured structures, which the Department of Transportation and DMV no longer regulate.

Other changes include how a vacancy on the committee is filled, how often meetings are held, how information on proposed or emergency actions is provided to committee members, and clarifies that recommendations of the committee members are advisory only. Other non-substantive changes are made for purposes of clarity and readability.

## NOTICES OF PROPOSED RULEMAKING

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

**Rules Coordinator:** Lauri Kunze

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

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

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### **Department of Transportation, Highway Division Chapter 734**

**Rule Caption:** Description of process for applying for an outdoor advertising sign permit.

**Stat. Auth.:** ORS 184.616, 184.619, 377.715 & 377.725

**Stats. Implemented:** ORS 377.715 & 377.725

**Proposed Adoptions:** 734-060-0000

**Last Date for Comment:** 2-23-09

**Summary:** This rule describes of process and requirements for a person to apply for an outdoor advertising sign permit, creating priorities among applicants; making provisions for administrative hearings.

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

**Rules Coordinator:** Lauri Kunze

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

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

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**Rule Caption:** New rules allowing official signs for Viticultural Areas.

**Stat. Auth.:** ORS 184.616, 184.619, 366.205, 366.405, 810.200 & 810.210

**Stats. Implemented:** ORS 366.205, 366.405, 810.200 & 810.210

**Proposed Adoptions:** 734-062-0100, 734-062-0105, 734-062-0110, 734-062-0115, 734-062-0120, 734-062-0125

**Last Date for Comment:** 2-23-09

**Summary:** HB 2273 (2007) deleted provision for Directional Signs under the Outdoor Advertising Sign laws for signs on private property visible to state highway. Viticultural Areas (wine-growing regions) had been a specifically qualifying feature for a Directional Sign Permit. To provide a different sign option, these rules would allow Viticultural Areas to be identified on official ODOT signs along interstates and freeways.

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

**Rules Coordinator:** Lauri Kunze

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

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

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**Rule Caption:** ODOT intends to amend rules regarding self-issued variance permits for towing a disabled log truck.

**Stat. Auth.:** ORS 184.616, 184.619 & 818.220

**Stats. Implemented:** ORS 818.200 & 818.220

**Proposed Amendments:** 734-072-0010, 734-072-0020, 734-072-0022, 734-072-0030

**Last Date for Comment:** 2-23-09

**Summary:** Division 72 rules specify operations eligible for, and requirements and qualifications for, self-issued variance permits authorizing oversize or overweight travel over Oregon highways. Revisions are needed to streamline authorization for companies that operate log trucks by allowing them to self-issue a variance permit when needed to tow a disabled log truck. When a log truck, loaded or empty, becomes disabled, current rules allow another log truck operating with a variance permit to tow the disabled vehicle(s) to the destination mill or the carrier's terminal, whichever is closer. The variance permit currently issued requires telephonic pre-authorization from ODOT. Due to the remote locations log trucks operate in,

there is not always telephone service available to allow the motor carrier to obtain required pre-authorization. There have been occasions that the time needed to obtain a pre-authorized variance permit to tow a disabled log truck has contributed to disrupting scheduled log processing at a mill. Providing a log hauler the ability to self-issue a variance permit will mitigate any such disruption.

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

**Rules Coordinator:** Lauri Kunze

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

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

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**Rule Caption:** Describes variance permit process for heavy loads and over-height operations.

**Stat. Auth.:** ORS 184.616, 184.619 & 818.200

**Stats. Implemented:** ORS 818.220 & 818.225

**Proposed Amendments:** 734-075-0010, 734-082-0015, 734-082-0025, 734-082-0040

**Last Date for Comment:** 2-23-09

**Summary:** These amendments relate to weight and height limits for combinations of vehicles operating under a single trip variance permit. Proposed amendments are needed to clarify Department processes used to determine variance permit requirements for extra heavy loads, and loads that exceed allowable height. Combinations of vehicles with an adequate number of axles and tires may obtain a variance permit to transport heavy loads that exceed the maximum axle and tandem axle weight limitations described in OAR 734-082-0015 if the weights do not exceed Permit Weight Table 5 limits. OAR 734-075-0010, 734-082-0025 and 734-082-0040 are amended to clarify allowable vertical clearance for over height loads and describe how vertical clearance limits are determined. Other amendments allow for an exception process for loads exceeding prescribed limits after review and approval by ODOT's Bridge Section, and update map revision dates.

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

**Rules Coordinator:** Lauri Kunze

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

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

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

**Rule Caption:** Adoption and amendment of Federal safety and hazardous materials transportation regulations affecting motor carriers.

**Stat. Auth.:** ORS 153.022, 184.616, 184.619, 469.470, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258 & 825.990

**Stats. Implemented:** ORS 825.210, 825.250, 825.252, 825.258 & 825.260

**Proposed Adoptions:** 740-100-0065, 740-100-0085

**Proposed Amendments:** 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740 110-0010, 740 110 0080

**Last Date for Comment:** 2-23-09

**Summary:** These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the adoption of CFR 49 Part 385 regarding safety fitness for intrastate motor carriers are necessary to ensure uniformity in the way motor carriers with an unsatisfactory safety rating are treated. Oregon stands to lose approximately



## NOTICES OF PROPOSED RULEMAKING

\$2.4 million of Motor Carrier Safety Assistance Program (MCSAP) funds if it fails to amend the incompatible rules. New rules adopt federal: (1) administrative out-of-service criteria; and (2) out-of-service criteria for vehicles used in the transportation of transuranic waste and highway route controlled quantities of radioactive materials. The Maximum Fine Schedule adopted under OAR 740-100-0100 is readopted to reflect current national standards.

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

**Rules Coordinator:** Lauri Kunze

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

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

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

**Rule Caption:** Minor Updates to Tax Incentive Program Rules.

**Stat. Auth.:** ORS 285A.075 & 285C.506(7)

**Stats. Implemented:** ORS 285C

**Proposed Amendments:** 123-070-1000, 123-070-1100, 123-070-1150, 123-155-0000, 123-155-0175, 123-155-0350

**Proposed Repeals:** 123-106-0000, 123-106-0010, 123-106-0020, 123-106-0030, 123-106-0040, 123-106-0050, 123-106-0060, 123-106-0070, 123-106-0080, 123-106-0090

**Last Date for Comment:** 2-21-09

**Summary:** This rulemaking makes technical corrections, conformity and updating associated with recent rulemakings and statutory revisions affecting First-source Agreement requirements for the Strategic Investment Program and Enterprise Zones, and modifying "Oregon Investment Advantage" (small city/business development taxable income exemption), in particular for purposes of sections 75 through 80, chapter 843, Oregon Laws 2007. It also repeals administrative rule division for the now statutory inoperative Advanced telecommunications Facilities Tax Credit.

**Rules Coordinator:** Janelle Lacefield

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

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

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### **Land Conservation and Development Department Chapter 660**

**Rule Caption:** New and amended rules regarding urban growth boundary adoption/amendment and review of such actions.

Date:	Time:	Location:
3-12-09	9 a.m.	Agriculture Bldg. 635 Capitol St. NE Salem, OR 97301

**Hearing Officer:** LCDC Staff

**Stat. Auth.:** ORS 197.040

**Other Auth.:** Statewide Planning Goals (OAR 660-015)

**Stats. Implemented:** ORS 195.015, 195.036, 197.295–197.314, 197.610 - 197.650 & 197.764

**Proposed Adoptions:** Rules in 660-024

**Proposed Amendments:** Rules in 660-024, 660-025

**Last Date for Comment:** 2-23-09 written comments; 3-12-09 public comment

**Summary:** These rules will clarify Goal 14 and other requirements of law regarding the adoption and amendment of urban growth boundaries (UGBs), provide new "safe harbors" intended to reduce local government time and cost in amending a UGB, especially with regard to determination of housing need, housing density and housing mix, employment need, and related topics. The proposed amendments would also clarify procedures for LCDC review of urban growth boundaries in the manner of periodic review under ORS 197.626, and may clarify procedures in OAR 660. division 24, regarding UGB adjustments.

The Commission may consider additional rule clarifications or amendments to the UGB process that may be proposed during the public comment period.

**Rules Coordinator:** Bryan Gonzalez

**Address:** Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540

**Telephone:** (503) 373-0050, ext. 322

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**Rule Caption:** Permanent Measure 49 Rules Clarifying Requirements for Measure 49 Authorizations, Including Notice to State.

Date:	Time:	Location:
3-12-09	9 a.m.	635 Capitol St. NE Basement Hearing Rm. Salem, OR

**Hearing Officer:** LCDC Staff

**Stat. Auth.:** ORS 197.040

**Other Auth.:** Statewide Land Use Planning Goals 2–4, 11 & 14 (OAR 660-015-000(2)–(4), (11) & (14))

**Stats. Implemented:** ORS 195.300–195.332

**Proposed Adoptions:** 660-041-0170

**Proposed Amendments:** Rules in 660-041

**Last Date for Comment:** 2-23-09

**Summary:** The proposed permanent rules amend OAR chapter 660, division 41. The purpose of these rules is twofold. First, the rules clarify the requirements and process for evaluating Elections under Section 6 of Measure 49 for home site authorizations. There is uncertainty as to whether certain Measure 37 claimants who sought relief under Measure 49 were lawfully permitted to establish the number of home site for which Elections have been submitted. These rules clarify how lawfully permitted uses are evaluated and decisions approving home sites authorized and determined. Second, the proposed rules also require local governments to notify DLCD of land use applications and decisions approving home sites authorized under Measure 49. This will ensure that state and local actions on Measure 49 Elections, including county land use approvals based on Measure 49 authorizations, and clustering and 20-homesite limitation requirements under Measure 49, are coordinated and consistent.

The Commission may consider other clarifications to these subjects that may be proposed during the public comment period.

An advisory committee was not used to assist the agency in drafting the proposed rule due to the need to act quickly to clarify requirements for evaluating Measure 49 elections, and the need to put a more formal structure in place quickly to coordinate state and local action on Measure 49 elections.

**Rules Coordinator:** Bryan Gonzalez

**Address:** Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540

**Telephone:** (503) 373-0050, ext. 322

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### **Oregon Health Licensing Agency Chapter 331**

**Rule Caption:** Makes technical adjustments, clarifies application documentation, fingerprint and background checks, and strengthens identification requirements for individuals seeking licensure.

Date:	Time:	Location:
3-2-09	9 a.m.	Rhoades Conf. Rm. 700 Summer St. NE, Suite 320 Salem, OR

**Hearing Officer:** Bert Krages

**Stat. Auth.:** ORS 676.605 & 676.615

**Other Auth.:** ORS 25.750–25.785, 36.224, 42 USC § 405(C)(2)(C)(i), 42 USC § 666(a)(13), ORS 181.534–181.560, 183, 192.410–192.505, 243, 291, 293, 305.385 & 670.280

**Stats. Implemented:** ORS 25.750 - 25.785, 36.110, 36.224, 42 USC § 405(C)(2)(i), and 42 USC § 666(a)(13), 181.534–181.560, 183, 192.410 - 192.505, 243, 291, 293, 305.385, 670.280, 676.605 & 676.615

## NOTICES OF PROPOSED RULEMAKING

**Proposed Adoptions:** 331-030-0005, 331-030-0025, 331-030-0040

**Proposed Amendments:** 331-001-0000, 331-001-0010, 331-010-0000, 331-010-0020, 331-010-0030, 331-010-0040, 331-020-0030, 331-020-0040, 331-020-0060, 331-020-0070, 331-030-0000, 331-030-0010, 331-030-0020

**Proposed Ren. & Amends:** 331-030-0030 to 331-020-0080

**Last Date for Comment:** 4-30-09, 5 p.m.

**Summary:** Proposed rules include temporary rules filed and effective December 1, 2008 that address requirements for completion of a fingerprint and criminal background check to determine fitness of individuals applying for an authorization issued or renewed by the agency, pursuant to ORS 676.612. Amendments pertain to application requirements and procedures for issuing and renewing authorizations to practice and requirements for notifying the agency of any changes in licensing information. Rules clarify requirements for acceptable documentation and personal identification of applicants to strengthen applicant licensure qualification criteria. These rules are needed to mitigate use of false identification and/or misrepresentation of personal information, to reduce potential agency liability and secure license issuance and renewal procedures. New rules prescribing requirements for submitting an "Affidavit of Licensure" are being proposed to clarify documentation requirements for substantiating licensure in another state.

The agency proposes to adopt rules pertaining to licensing for out-of-state practitioners/professional during a declared emergency situation to remedy potential shortages in Oregon.

Other technical amendments to agency rules streamline notice of proposed rulemaking, update adoption of model rules of procedures, clarify definitions used in agency rules, align rules pertaining to refund of payments and fees for public records and publications with requirements under the Oregon Accounting Manual, and correct ORS citations and agency name resulting from 2003 Session Laws.

**Rules Coordinator:** Patricia C. Allbritton

**Address:** Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287

**Telephone:** (503) 373-2088

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

**Rule Caption:** Makes technical adjustments, clarify licensing requirements, strengthen identification requirements, and delete interpreter assisted examinations.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-2-09	9 a.m.	Rhoades Conf. Rm. 700 Summer St. NE, Suite 320 Salem, OR

**Hearing Officer:** Bert Krages

**Stat. Auth.:** ORS 676.615, 690.048, 690.123 & 690.165

**Other Auth.:** ORS 690.605 & 676.610

**Stats. Implemented:** ORS 690.046, 690.065 & 690.085

**Proposed Adoptions:** 817-005-0005, 817-010-0101, 817-020-0015, 817-030-0005, 817-030-0015, 817-030-0020, 817-030-0040, 817-030-0045, 817-030-0065, 817-035-0010, 817-035-0030, 817-035-0050, 817-035-0070, 817-035-0090, 817-035-0110

**Proposed Repeals:** 817-030-0100

**Proposed Ren. & Amends:** 817-020-0005 to 817-020-0006, 817-020-0011 to 817-020-0006, 817-020-0012 to 817-020-0006

**Last Date for Comment:** 4-30-09, 5 p.m.

**Summary:** Proposed rules include temporary rules filed and effective December 1, 2008, and synchronize with temporary agency rules, effective December 1, 2008 that are also concurrently undergoing regular rulemaking.

- Division 005 and 0202 amendments make technical adjustments to the definition of epidermis and correct specific citations, clarify infection control measures for foot spa equipment, and links board rules with overarching agency rules.

- Division 020 amendments reorganize several rule sections and clarify requirements regarding facility licensure pertaining to qualification for licensing and operations, licensing a facility within a residence, compliance with inspections and investigations, and changes in legal status of facility ownership.

- Division 030 amendments pertain to application, qualification and examination requirements for issuing and renewing authorizations to practice by the agency. Rules clarify requirements acceptable documentation and personal identification of applicants to strengthen applicant licensure qualification criteria. Proposed changes include deleting provisions for use of interpreter assisted examinations to secure the use of the national examination contractor. Amendments specify under what conditions the Oregon Laws and Rules examination is required.

- Division 035 amendments make technical wording adjustments regarding issuance and renewal of certificates, licenses and/or registration for practitioners, facility owners and independent contractors. Revisions are proposed to the requirements for practitioners working under a Certificate of Identification, requiring passage of the Oregon Laws and Rules examination or completion of the agency's Safety and Infection Control class every two years as a condition of renewal. Provisions link with overarching agency rules regarding notification requirements.

**Rules Coordinator:** Patricia C. Allbritton

**Address:** Oregon Health Licensing Agency, Board of Cosmetology, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287

**Telephone:** (503) 373-2088

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**Oregon Liquor Control Commission  
Chapter 845**

**Rule Caption:** Amending financial assistance rules expanding allowed point of sale and items of nominal value.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-24-09	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

**Stat. Auth.:** ORS 471, including 471.030, 471.730(1) & (5)

**Stats. Implemented:** ORS 471.398(4)

**Proposed Amendments:** 845-013-0050, 845-013-0060

**Last Date for Comment:** 3-10-09

**Summary:** This package contains two of the Commission's rules from our Division 13 Financial Assistance rules; this division of rules implements our statutes governing "Tied-House" prohibitions. OAR 845-013-0050 describes the point of sale (POS) materials that a supplier (manufacturer or wholesaler) is allowed to provide to a retailer, while OAR 845-013-0060 describes the items of nominal value that a supplier is allowed to provide to a retailer. The proposed rule amendments include specific recommendations from a Business Partners Joint Steering Committee workgroup. The original industry concerns raised were that the current rules limit suppliers in their advertising possibilities and also focus the Commission's limited enforcement resources on the regulation of items like coasters and napkins. The industry goal was to amend our rules to more closely reflect the standards in the Federal regulations. The proposed amendments are specifically targeted to only two discrete areas of the larger set of financial assistance regulations. Staff believes that the proposed amendments to the regulation of point of sale advertising materials and consumer take-aways address industry advertising concerns while also maintaining and clarifying the regulations that are most important in keeping industry from unduly influencing retail licensees.

**Rules Coordinator:** Jennifer Huntsman

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222

**Telephone:** (503) 872-5004

## NOTICES OF PROPOSED RULEMAKING

### Oregon Medical Board Chapter 847

**Rule Caption:** Grant authority to Board Medical Director to approve Interim Stipulated Orders.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.265 & 677.275

**Proposed Amendments:** 847-001-0030

**Last Date for Comment:** 2-28-09

**Summary:** The proposed rule adds authority to Board's Medical Director to approve Interim Stipulated Orders (limitation on license) if the Board's Executive Director is not available, so that Orders may become public information and be released to hospitals and health care facilities, in the interest of protecting the public.

**Rules Coordinator:** Diana M. Dolstra

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

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

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**Rule Caption:** Licensee shall notify Board of change in residence, practice or mailing address within 30 days.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.172

**Proposed Amendments:** 847-008-0060

**Last Date for Comment:** 2-28-09

**Summary:** The proposed rule change requires the licensee to notify the Board of a change in residence, practice or mailing address within 30 days of the change.

**Rules Coordinator:** Diana M. Dolstra

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

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

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**Rule Caption:** Changes to EMT-P scope of practice: central IV access, medications and blood products, ECG monitoring.

**Stat. Auth.:** ORS 682.245

**Stats. Implemented:** ORS 682.245

**Proposed Amendments:** 847-035-0030

**Last Date for Comment:** 2-28-09

**Summary:** The proposed rule change allows EMT-Ps to access indwelling catheters and implanted central IV ports for fluid and medical administration; adds language that EMT-Ps may administer any medication or blood product after adequate and appropriate instruction, including risks, benefits and use of the medication; and allows EMT-Ps to initiate and interpret ECG monitoring.

**Rules Coordinator:** Diana M. Dolstra

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

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

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**Rule Caption:** Change name of Diversion Program Supervisory Council; increase council size.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.615

**Proposed Amendments:** 847-065-0000

**Last Date for Comment:** 2-28-09

**Summary:** The proposed rule amendment changes the name of the Diversion Program Supervisory Council to the Health Professionals Program Supervisory Council, and increases the size of the council from five to seven members.

**Rules Coordinator:** Diana M. Dolstra

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

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

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**Rule Caption:** Graduates from non-accredited programs prior to 1989 require no ACAOM western medicine requirements for licensure.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.759

**Proposed Amendments:** 847-070-0016

**Last Date for Comment:** 2-28-09

**Summary:** The proposed rule change specifies that applicants who graduated from non-accredited acupuncture programs prior to 1989 are not required to have obtained the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) western medicine requirements for licensure.

**Rules Coordinator:** Diana M. Dolstra

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

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

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### Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Proposed amendments and new rules provide clarification on current PERS earnings crediting practices.

**Date:**

**Time:**

**Location:**

2-17-09

2 p.m.

PERS, Boardroom

11410 SW 68th Pkwy.

Tigard, OR

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.455, 238.650 & 238A

**Stats. Implemented:** ORS 238 & 238A

**Proposed Adoptions:** 459-007-0310, 459-007-0320, 459-007-0330, 459-007-0340, 459-007-0400, 459-007-0410, 459-007-0420

**Proposed Amendments:** 459-007-0001, 459-007-0005, 459-007-0015, 459-007-0020, 459-007-0025, 459-007-0050, 459-007-0060, 459-007-0080, 459-007-0110, 459-007-0230, 459-007-0240, 459-007-0250, 459-007-0300, 459-007-0900, 459-017-0060, 459-080-0200, 459-080-0250

**Last Date for Comment:** 3-4-09

**Summary:** The proposed rule modifications make necessary clarifications to the earnings crediting rules based on a broad review of earnings crediting practices.

Copies of the proposed rules are available to any person upon request. The rules are also available at [http://www.oregon.gov/PERS/about\\_us.shtml](http://www.oregon.gov/PERS/about_us.shtml). Public comment may be mailed to the above address or sent via email to [Daniel.Rivas@state.or.us](mailto:Daniel.Rivas@state.or.us)

**Rules Coordinator:** Daniel Rivas

**Address:** Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281

**Telephone:** (503) 603-7713

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### Oregon State Library Chapter 543

**Rule Caption:** Oregon Statewide Reference Assistance Program.

**Date:**

**Time:**

**Location:**

2-20-09

12:30 p.m.

Oregon State Library

250 Winter St. NE

Salem, OR 97301

**Hearing Officer:** M. Yvonne Williams

**Stat. Auth.:** ORS 357.209

**Stats. Implemented:** ORS 357.206, 357.209 & 357.212

**Proposed Adoptions:** 543-060-0070

**Proposed Amendments:** 543-060-0000 – 543-060-0060

**Last Date for Comment:** 2-19-09, 5 p.m.

**Summary:** This rule provides a framework for providing statewide reference assistance to libraries in Oregon. This amendment expands the scope of division 60 to include statewide cooperative reference services. It allows the State Library Board of Trustees to assess and collect annual payments from some public and academic libraries to partially support statewide cooperative reference services.

**Rules Coordinator:** James B. Schepke



## NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon State Library, 250 Winter St. NE, Salem, OR 97301

**Telephone:** (503) 378-4367

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

**Rule Caption:** Amends rules specifying number of future drawings for which a player may purchase a ticket.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-20-09	9:30–10 a.m.	Oregon Lottery 500 Airport Rd, SE Salem, OR

**Hearing Officer:** Larry Trott

**Stat. Auth.:** ORS 461

**Other Auth.:** OR Constitution, Art. XV, § 4(4)

**Stats. Implemented:** ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

**Proposed Amendments:** 177-046-0020, 177-075-0010, 177-081-0020, 177-083-0020, 177-083-0030, 177-083-0040, 177-085-0015, 177-094-0020

**Proposed Repeals:** 177-046-0020(T), 177-075-0010(T), 177-081-0020(T), 177-083-0020(T), 177-083-0030(T), 177-083-0040(T), 177-085-0015(T), 177-094-0020(T)

**Last Date for Comment:** 2-20-09, 10 a.m.

**Summary:** This rulemaking repeals current language in each of the above game divisions specifying the number of future consecutive drawings a player may purchase tickets for, and adopts a new provision in division 46 that authorizes the Lottery to determine that limit.

**Rules Coordinator:** Mark W. Hohlt

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

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

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**Rule Caption:** Change calculation of time period to return unsold Scratch-it<sup>SM</sup> tickets when a game ends.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-20-09	9–9:30 a.m.	Oregon Lottery 500 Airport Rd, SE Salem, OR

**Hearing Officer:** Larry Trott

**Stat. Auth.:** ORS 461

**Other Auth.:** OR Constitution, Art. XV, § 4(4)

**Stats. Implemented:** ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

**Proposed Amendments:** 177-050-0100

**Last Date for Comment:** 2-20-09, 9:30 a.m.

**Summary:** The Oregon Lottery® has initiated permanent rulemaking to amend OAR 177-050-0100 to change how the time period for returning unsold Scratch-it<sup>SM</sup> tickets by Lottery retailers is calculated.

**Rules Coordinator:** Mark W. Hohlt

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

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

.....  
**Oregon University System,**  
**Eastern Oregon University**  
**Chapter 579**

**Rule Caption:** Amend special student and course fees.

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 351.070

**Proposed Amendments:** 579-020-0006

**Last Date for Comment:** 2-23-09

**Summary:** Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.

**Rules Coordinator:** Lara Moore

**Address:** Oregon University System, Eastern Oregon University, One University Blvd., La Grande, OR 97850

**Telephone:** (541) 962-3368

.....  
**Parks and Recreation Department**  
**Chapter 736**

**Rule Caption:** Amendment to OAR 736-018-0045 for adoption of the Silver Falls State Park Master Plan.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-25-09	6 p.m.	725 Summer St., Suite C Rm. 124 Salem, OR 97301

**Hearing Officer:** Mark Davidson

**Stat. Auth.:** ORS 390.180 & 390.124

**Stats. Implemented:** ORS 390.180(1)

**Proposed Amendments:** 736-018-0045

**Last Date for Comment:** 3-27-09

**Summary:** ORS 390.180(1)(c) authorizes the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a new master plan for Silver Falls State Park. 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 an state rule.

The master plan for Silver Falls State Park 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, a advisory committee, affected interest groups as well as 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

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**Psychiatric Security Review Board**  
**Chapter 859**

**Rule Caption:** Amend existing Rules: OAR 859-040-0010 and OAR 859-040-0015.

**Stat. Auth.:** ORS 161.387

**Stats. Implemented:** ORS 161.295 et seq.

**Proposed Amendments:** 859-040-0010, 859-040-0015

**Last Date for Comment:** 2-22-09

**Summary:** Amend existing rule: OAR 859-040-0015. Amend existing rule OAR 859-040-0010 to adopt subsection 5.

**Rules Coordinator:** Evangelia King

**Address:** Psychiatric Security Review Board, 620 SW 5th Ave. - Suite 907, Portland, OR 97204

**Telephone:** (503) 229-5596

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

**Rule Caption:** In the Matter of a Rulemaking to Delete the Sunset Provision in OAR 860-022-0070.

**Stat. Auth.:** ORS 183, 756.040, 757.210 & 757.259

**Stats. Implemented:** ORS 757.210 & 757.259

**Proposed Amendments:** 860-022-0070

**Last Date for Comment:** 2-23-09, Close of Business

**Summary:** The spring earnings review established in OAR 860-022-0070(7) was effective for two years beginning 2007 and allowed a potential extension after the second year. However, on October 21, 2008, in its Order No. 08-508, the Commission adopted a Purchased Gas Adjustment Mechanism that now includes an annual spring earnings review. The proposed amendment to OAR 860-022-0070 eliminates the sunset provision (section 7) of the spring earnings review.

**Rules Coordinator:** Diane Davis

## NOTICES OF PROPOSED RULEMAKING

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**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE,  
Suite 215, Salem, OR 97301  
**Telephone:** (503) 378-4372

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**Rule Caption:** In the Matter of Housekeeping Amendments to  
OAR 860-034-0010 and 860-034-0310 and Repeal of OAR 860-  
034-0120.

**Stat. Auth.:** ORS 756.040 & 759.045

**Stats. Implemented:** ORS 756.040, 759.045, 759.220 & 759.225

**Proposed Amendments:** 860-034-0010, 860-034-0310

**Proposed Repeals:** 860-034-0120

**Last Date for Comment:** 2-24-09, 5 p.m.

**Summary:** The rule amendment to 860-034-0010 clarifies that “for good cause shown,” the Commission may waive or deviate from the Division 034 rules. By making this clarification, the Commission may be able to process more efficiently such requests by subject companies. The proposed amendment to 860-034-0310 clarifies the rule by changing “intrastate telecommunications services” to “tariffed rates,” which is a term understood by the industry. The proposed repeal of 860-034-0120 is necessary because for subject companies, an increase in the late payment charge falls within the scope of OAR 860-034-0310, and a separate process is not required by statute. Other housekeeping readability changes are also proposed for the rules.

**Rules Coordinator:** Diane Davis

**Address:** 550 Capitol Street NE, Suite 215, Salem, OR 97301  
**Telephone:** (503) 378-4372

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### **Secretary of State, Archives Division Chapter 166**

**Rule Caption:** Establishes financial records retention periods in the  
state general records retention schedule.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-17-09	9 a.m.	Conference Rm., State Archives Bldg. 800 Summer St. NE. Salem, OR

**Hearing Officer:** Connor Edmonds

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

**Stats. Implemented:** ORS 192.005–192.170 & 357.805–357.895

**Proposed Amendments:** 166-300-0025

**Last Date for Comment:** 2-17-09, 5 p.m.

**Summary:** Brings state agency general records retention schedule into compliance with Automated Clearing House (ACH) and National Automated Clearing House Association (NACHA) rules with regard to financial records retention.

**Rules Coordinator:** Julie Yamaka

**Address:** 800 Summer Street NE., Salem, OR 97310

**Telephone:** (503) 378-5199



# ADMINISTRATIVE RULES

## Board of Accountancy Chapter 801

**Rule Caption:** Add cost recovery, clarify exam rules and sole proprietor firm registration requirements.

**Adm. Order No.:** BOA 1-2008

**Filed with Sec. of State:** 12-30-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 801-001-0035

**Subject:** The rule is amended to update the effective date of professional standards to January 1, 2009.

**Rules Coordinator:** Kimberly Bennett—(503) 378-2268

### 801-001-0035

#### Professional Standards

The professional standards, interpretations, rulings and rules designed and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2009.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09

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**Rule Caption:** Add cost recovery, clarify exam rules and sole proprietor firm registration requirements.

**Adm. Order No.:** BOA 2-2008

**Filed with Sec. of State:** 12-30-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 801-010-0010, 801-010-0050, 801-010-0115, 801-010-0345

**Subject:** New provision to include cost recovery of Board investigations. Clarify CPA examination rules. Clarify that sole proprietors may also register as a professional corporation or limited liability company.

**Rules Coordinator:** Kimberly Bennett—(503) 378-2268

### 801-010-0010

#### Fees, Civil Penalties and Cost Recovery

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

(1) **Application fees.** All application fees are non-refundable.

(a) CPA Examination:

(A) Initial Examination — \$100.

(B) Re-Examination — \$50.

(b) CPA Certificate or PA License — \$150.

(c) Substantial equivalency by notification — \$100.

(2) **Initial permit and registration fees:**

(a) Initial CPA or PA Permit — \$150.

(b) Municipal Auditor — \$100.

(c) Firm Registration — \$100.

(3) **Biennial renewal application fees:**

(a) Active CPA and PA Permits — \$150.

(b) Inactive Permit CPA and PA Permits — \$50.

(c) Municipal Auditor — \$100.

(d) Firm Registration — \$100.

(4) **Annual renewal fees:**

(a) Substantial equivalency by notification — \$100.

(5) **Late renewal penalty fees:**

(a) Active CPA and PA Permits — \$50.

(b) Inactive Permit CPA and PA Permits — \$35.

(c) Firm Registration — \$35.

(6) **Miscellaneous fees:**

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of \$2.50 for five pages or less, and 25 cents per

page thereafter. If certified copies of records are requested, there will be a \$2.50 fee for each document certified in addition to the copy cost.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Secretarial/clerical, \$17 per hour, in quarter hour increments at \$4.25 per quarter hour.

(B) Professional/technical, \$25 per hour, in quarter hour increments at \$6.25 per quarter hour.

(7) **Civil Penalties assessed for Specific Violations:**

(a) Failure to provide change of address in 30 days — \$100.

(b) Failure to renew firm registration by January 31 — \$500.

(c) Failure to respond to Notice of Complaint in 21 days — \$1000.

(d) Failure to respond to Notice of CPE audit and all follow-up in 21 days — \$250.

(e) Failure to respond to Notice of Peer Review Audit in 21 days — \$1000.

(f) Failure to respond in 21 days to any Board Communication that is not described above — \$100.

(8) **Cost Recovery:**

(a) The Board may recover costs associated with a contested case hearing in which the Board has prevailed. The following costs may be included in cost recovery:

(A) Attorney General Fees.

(B) Administrative Hearing Costs.

(C) Contract Investigator Fees.

(D) Expert Witness Fees.

(E) Costs of Appeal.

(8) **Form of Payment:**

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and Mastercard payments may be submitted in person, by mail or by fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160, 197.720 & 673.153

Stats. Implemented: ORS 673, 297 & 192.440

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09

### 801-010-0050

#### Application for Uniform CPA Examination

(1) **Definitions:**

(a) **Authorization to Test (ATT):** Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit an application and re-examination fee to the Board of Accountancy for any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

(b) **Notice to Schedule (NTS):** Issued by NASBA and enables the candidate to schedule testing at an examination test center. The NTS shall remain open until the candidate schedules testing or until six months have elapsed since the NTS was issued, whichever occurs first.

(c) **Testing Center:** Computer testing facilities, approved by the Board and listed on the Board website, at which candidates may take the CPA examination. Testing centers are located throughout the United States, Guam, Puerto Rico and the Virgin Islands.

(d) **Testing Opportunity:** Each testing window is considered a testing opportunity. There are four testing opportunities per year. A candidate may test for a particular section only once per testing window. A candidate may not retake a failed test section(s) in the same testing window.

## ADMINISTRATIVE RULES

(e) **Testing Windows:** The testing window is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered so that exam sections can be graded and maintenance may be performed.

(2) **Applications.**

(a) Applications for the CPA exam shall be submitted on a form provided by the Board and shall be accompanied by the appropriate fee. The act of filing an application for the CPA exam constitutes an agreement by the candidate to observe and comply with the CPA Exam rules adopted by the Board.

(b) An application will not be reviewed until the application fee and all required supporting documents have been received, including proof of identity (as determined by the Board and specified on the application form), official transcripts and evidence that the candidate has met eligibility requirements.

(c) All foreign academic credentials submitted as evidence of eligibility for the CPA exam are required to be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(d) An application for the CPA examination must be complete in every particular within 3 months from the date it is received at the Board office. If an application is incomplete, the candidate will be found ineligible and the file will be closed. A candidate whose file has been closed as described herein is required to submit a new application, application fee and all required documents.

(e) Candidates shall pay the CPA exam application fee designated in OAR 801-010-0010 to the Board. All other fees associated with the CPA exam are required to be paid to NASBA. All CPA exam fees are non-refundable. If a candidate fails to appear for a scheduled testing at an approved test center, all fees paid will be forfeited for the examinations scheduled on that day.

(f) At the time of application and during the time any ATT issued by the Oregon Board of Accountancy is open, the candidate shall not have an open ATT for the same section in any other state or jurisdiction.

(g) The candidate shall certify at the time of application that he or she is in compliance with subsection (f) of this rule. Falsifying this certification or including any false, fraudulent, or materially misleading statements on the application for the examination, or including any material omission on the application for the examination shall be cause for disciplinary action under ORS 673.170.

(h) When an application is approved, the Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database.

(i) The Board will offer a candidate the opportunity to voluntarily disclose the candidate's social security number to the Board so that the Board may provide the social security number to NASBA for identification purposes.

(3) **Eligibility under education requirements.** Candidates for admission to the CPA exam after January 1, 2000 who are applying under the educational requirements of ORS 673.050(1)(a) shall demonstrate eligibility as follows:

(a) **150 Hour rule:** Candidates shall present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(A) A baccalaureate or higher degree from a regionally accredited college or university as described in ORS 673.050(1)(a);

(B) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(C) A minimum of 24 semester hours or 36 quarter hours in accounting or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(D) The required number of hours in accounting or related subjects may be obtained by satisfactory completion of such hours taken from divisions of continuing education extended by a regionally accredited four-year college or university, or from a community college, providing the community college courses are transferable as equivalent courses to an accredited four-year college or university.

(E) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from a regionally accredited college or university may obtain additional hours from a community college, if such hours would be transferable to an accredited college or university. However, completion of 150 hours consisting entirely of courses taken from a community college or divisions of continuing education shall not be considered equivalent to a baccalaureate or higher degree from a four-year accredited college or university under the requirements of ORS 673.050.

(b) **Candidates who applied before January 1, 2000:** Returning candidates after January 1, 2000 who do not meet the educational requirement under ORS 673.050(1)(a) are required to sit for at least two sections of the CPA exam per calendar year in order to maintain eligibility under the requirements of 673.050 that were in effect prior to January 1, 2000. Returning candidates shall provide satisfactory evidence that:

(A) The candidate met CPA exam eligibility requirements that were in effect in Oregon at the time the candidate sat for the CPA exam for the first time in any jurisdiction; and

(B) The candidate sat for and received grades for at least one of the Uniform CPA Examinations in any jurisdiction in 1998 or 1999.

(c) Evidence of eligibility. Candidates must meet all requirements under this rule at the time of application. Satisfactory evidence of the educational requirement may be provided in the following manner:

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree shall provide an official transcript(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

(B) Candidates who have completed all course requirements at the time of application, but for whom a baccalaureate degree has not yet been awarded shall provide an official transcript(s) showing successful completion of all courses required under these rules, together with a letter from the Registrar's Office of the college or university stating that the candidate has met the degree requirements and the date that the degree will be awarded.

(C) Only official transcripts that are forwarded directly to the Board office by the issuing college or university will be accepted.

(D) Only colleges or universities accredited by one of the six regional accrediting associations and listed as accredited in the *Directory of Post secondary Institutions* published by the National Center for Education Statistics shall be recognized by the Board.

(4) **Eligibility under experience standards.** Candidates for the CPA exam who are applying under the experience requirements of ORS 673.050(2) to be licensed as a Public Accountant shall submit satisfactory evidence that:

(a) The candidate graduated from a high school with a four-year program, or the equivalent; and

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board that meets the requirements of OAR 801-010-0100(2) and 801-010-0065(2).

(c) Returning candidates after January 1, 2002 who were eligible to take two sections of the CPA Exam under provisions of ORS 673.100 in effect prior to January 1, 2002, are required to sit for at least one exam section in any two testing windows each year in order to maintain eligibility under those requirements.

(5) **Authorization to Test and Notice to Schedule:**

(a) An ATT authorizes the candidate to test one time for those sections of the CPA exam that are specified in the ATT. An ATT is effective for six months from the date on which the corresponding NTS is issued or until the NTS expires, whichever occurs first; however, the ATT will expire ninety (90) days after it is issued if the candidate has not paid the appropriate fees to NASBA.

(b) Expiration of the ATT. Authorization to take a specified exam section will expire on any of the following events:

(A) When the candidate schedules and takes a designated exam section;

(B) If the candidate schedules a testing date for a designated exam section but fails to appear and take the section at the scheduled time;

(C) If the candidate fails to schedule a designated exam section within the six-month period defined by the NTS; or

(D) If the candidate fails to request an NTS and pay the appropriate fees to NASBA within 90 days of the date the ATT is issued.

(c) **Suspension of the ATT.** An ATT may be suspended by the Board of Accountancy based on a report from NASBA that a problem related to the candidate is identified on the National Candidate Database, or for other good cause as determined by the Board.

(d) **Payment of CPA Exam testing fees.** To obtain a Notice to Schedule (NTS), the candidate must remit the CPA exam testing fees required for the CPA exam sections specified in the ATT to NASBA within ninety (90) days from the date the ATT is issued. Failure to remit the required fees and obtain the NTS will cause the ATT to expire, and the candidate must submit a re-examination application to the Board, with the appropriate CPA exam fee, to receive another ATT.

(e) **NTS.** When the candidate receives an ATT from the Board, the candidate is required to:

# ADMINISTRATIVE RULES

(A) Submit to NASBA payment of all fees related to testing of the CPA exam sections authorized by the ATT;

(B) Upon receipt of the NTS, contact an approved test center to schedule the time and place for testing of the exam sections authorized by the NTS. CPA exam sections do not have to be scheduled on the same date.

(C) The NTS remains valid for each exam section until the candidate schedules testing for that specific section, or for six months from the date the NTS was issued, whichever occurs first.

(D) The NTS expires as to each individual exam section when the candidate schedules testing for that section, whether or not the candidate appears at the scheduled testing appointment.

(f) **Testing.**

(A) A candidate may schedule testing at an approved testing center in Oregon or in another jurisdiction. A list of approved testing centers is on the Board of Accountancy website.

(B) Candidates must comply with the procedures and rules of the test center.

(g) **Re-examination.** A completed re-examination application and payment of the appropriate fee to the Board of Accountancy is required:

(A) To retake any exam section that the candidate does not pass;

(B) To obtain an NTS for any exam section that the candidate failed to schedule during the six month period for which a previous NTS was issued;

(C) To obtain an NTS for any exam section for which the candidate failed to obtain an NTS during the ninety (90) day period after the date the ATT was issued.

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stats. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: IAB 10, f. 2-7-63; IAB 14, f. 8-15-68; IAB 20, f. 10-22-71, ef. 11-15-71; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 41, f. & ef. 12-2-76; IAB 44, f. & ef. 3-31-77; IAB 48, f. & ef. 7-21-77; IAB 6-1978, f. & ef. 6-22-78; IAB 7-1981, f. & ef. 7-27-81; IAB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09

## 801-010-0115

### Resignation of Licensee

(1) **Resigning permits that are not the subject of pending complaints or Board investigations.** A certified public accountant or public accountant may resign and surrender the licensee's certificate or license and permit issued under ORS 673.040, 673.100 and 673.150, by submitting a written resignation, together with the original certificate or license issued by the Board. The licensee's resignation shall be accepted by the Board only if the licensee acknowledges in writing that:

(a) The license or certificate issued to the licensee must be returned to the Board; and

(b) After such resignation, in the event that the licensee wishes to reapply for a permit to practice public accountancy, the licensee will be required to meet all requirements of ORS Chapter 673 and OAR chapter 801.

(c) All resignations are effective upon acceptance by the Board.

(2) **Resigning permits that are the subject of pending complaints or Board investigations.** If the licensee's certificate or license is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee shall be deemed to be a revocation for cause in the event that the licensee applies for a certificate or license after such resignation is accepted by the Board. A licensee who resigns under this section is required to notify all clients of the date of resignation and provide the Board with a list of the clients notified. The Board may refuse to accept a resignation under this provision if the written resignation does not include a written acknowledgment by the resigning licensee of the following:

(a) That the licensee is required to return the CPA certificate or PA license to the Board;

(b) That the licensee has knowledge of any pending investigation or disciplinary proceedings and does not wish to contest or defend the matter;

(c) That the licensee understands that in the event the licensee submits a subsequent application to be licensed to practice public accountancy, the licensee shall not be entitled to a reconsideration or re-examination of the facts, complaints, or instances of misconduct upon which investigations or disciplinary proceedings were pending at the time of the resignation; and

(d) That upon any subsequent application to practice public accountancy, the licensee must meet all requirements of ORS Chapter 673 and OAR chapter 801.

(e) Unless otherwise ordered by the Board, any pending investigation or disciplinary proceeding shall be closed upon acceptance of the licensee's resignation.

(3) **Requirements upon acceptance of resignation.** Upon resignation, a former licensee is required to:

(a) Surrender the CPA certificate or PA license to the Board;

(b) Take all reasonable steps to avoid foreseeable harm to any client;

(c) Maintain client records for a period of at least six years, or return such records to the client; and

(d) Continue to comply with the requirements of OAR 801, division 030 pertaining to confidential information and client records.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.410

Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09

## 801-010-0345

### Registration of Business Organizations

(1) **Requirement to register as a firm.** A business organization organized for the practice of public accountancy shall register with the Board as a firm if the business organization engages in any of the following activities in this state:

(a) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(b) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy; or

(c) Performs attestation or compilation services, as defined by these rules.

(2) **Registration of sole proprietors.** A business organization organized as a sole proprietorship, a professional corporation or a limited liability company, and comprised of a single permit holder under ORS 673.150, is required to register as a firm if the business organization engages in any of the following activities in this state:

(a) Holds out to clients or to the public that it is composed of more than one licensee; or

(b) Performs attestation or compilation services.

(3) **Application requirements.** Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) shall be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. The application and each renewal application shall provide the following information in writing:

(a) Name of the firm;

(b) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;

(c) The physical address of every office and branch office in this state;

(d) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;

(e) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and

(f) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.

(4) **Application requirements for firms with non-CPA and non-PA ownership.** In addition to the information required under section (3) of this rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm shall provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;



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(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

(d) The physical address of every office maintained in this state;

(e) The identity of every person with management responsibility for each office in this state;

(f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) **Issuance of firm registration.** The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal. Business organizations that fail to renew a registration by the close of the renewal period are required to pay the renewal fee plus a late fee;

(b) Notify the Board in writing of any change in the firm name within 30 days of such change;

(c) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(d) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) **Form of practice.** A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) **Non-CPA or non-PA ownership.** A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(A) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant previously licensed in any state whose license to practice public accountancy has been revoked by any state, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) **Branch offices.**

(A) Every branch office located in this state shall be managed by a licensee holding a permit issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) **Internet Practice.** Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09

**Rule Caption:** Business transactions with clients.

**Adm. Order No.:** BOA 3-2008

**Filed with Sec. of State:** 12-30-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 801-030-0020

**Subject:** Revisions require written disclosure when licensees and clients engage in business transactions that may affect the licensee's objectivity.

**Rules Coordinator:** Kimberly Bennett—(503) 378-2268

## 801-030-0020

### Other Responsibilities and Practices

#### (1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

#### (2) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others.** A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising.** A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

(a) Includes a misrepresentation of fact;

(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;

(c) Is intended or likely to create false or unjustified expectations of favorable results;

(d) Falsely states or implies educational or professional attainments or licensing recognition;

(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(5) **Professional designations.** A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

#### (6) Firm names.



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## (a) **False and misleading firm names.**

(A) A public accounting firm shall not offer or provide public accounting services using a firm name that is misleading as to the legal entity or organization of the firm, as to the owners or employees of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, the number of licensees associated with or working for the firm or the identity of individual members of the firm. Except as provided in paragraphs (D) and (E) of this subsection, a firm name shall not include information about or indicate an association with, individuals who are not members of the firm.

(C) A firm name shall include words or abbreviations required by the laws under which the business organization is organized to identify the form of business organization or legal entity being used by the firm.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member:

(i) Is not actively engaged in the practice of public accountancy as a sole proprietor in the same market area; and

(ii) Approves in writing of the continued use of such name. Approval given by a licensee for the continued use of licensee's name may be withdrawn by the licensee, in writing and shall allow a reasonable period of time for the firm to withdraw such name.

(E) A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this rule.

(b) **Singular firm names.** The use by a certified public accountant or public accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant", "CPA" or "PA" is not misleading.

## (c) **Plural firm names.**

(A) The use by a firm of a plural title or designation, including words like "company", "and company", "associates" and "accountants", is not misleading if, in addition to the names of persons included in the firm name, the firm employs at least one staff person, who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

## (d) **Assumed business names.**

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) **Notice to Board.** A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

## (7) **Board communications and investigations.**

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

## (8) **Business transactions with clients.**

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented in writing to the transaction after receiving full written disclosure of the differing interests from the licensee. Both written disclosure and client's written consent shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) **Notification of change of address, employer or assumed business name.** Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) **Child support defaults.** In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(11) **State tax defaults.** In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate,

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the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) **Continuing violation.** A continuing violation is a violation of any provision of ORS 673.010 – 673.457 or OAR chapter 801 that remains in place (“continues”) without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single violation, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

(13) **Non-Disclosure Agreement.** “Non-disclosure agreement” means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS Chapter 673 or OAR chapter 801 to the Board, or that inhibits any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal government.

(a) Licensees shall not enter into, nor benefit directly or indirectly from, any non-disclosure agreement.

(b) Any licensee who is a party to a non-disclosure agreement and who receives written notice from the Board, an agency of any state, or an agency of the Federal government requesting information that is subject to the provisions of such non-disclosure agreement, shall provide a written release for information requested within 30 days of the date of notice.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; IAB 1-1981, f. 1-6-81, ef. 6-1-81; IAB 3-1981, f. & ef. 1-6-81; IAB 2-1984, f. & ef. 5-21-84; IAB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2008, f. 12-30-08, cert. ef. 1-1-09

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**Rule Caption:** Ethics CPE required every renewal period and new licensees Oregon specific ethics.

**Adm. Order No.:** BOA 4-2008

**Filed with Sec. of State:** 12-30-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 801-040-0010, 801-040-0090

**Subject:** Revisions require new licensees to complete an Oregon specific ethics course during the first renewal cycle. All licensees will be required to report 4 hours of general ethics each renewal cycle. Reduces reinstatement fees for certain licensees.

**Rules Coordinator:** Kimberly Bennett—(503) 378-2268

## 801-040-0010

### Basic Requirements

(1) **Biennial CPE requirement.** Each biennial renewal period, certified public accountants and public accountants shall report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement shall be completed as follows:

(a) At least 24 of the required 80 CPE hours shall be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) **Ethics CPE requirement.** CPE hours in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(a) **All active licensees who are applying for the first renewal permit in Oregon** are required to complete and report at least four hours of CPE in a professional conduct and ethics program that meets the requirements of section three (3) of this rule.

(b) **Licensees who are not renewing for the first time and whose principal place of business is located in another jurisdiction** may meet the ethics requirement of this rule by demonstrating compliance with the other jurisdiction’s professional conduct and ethics CPE requirement. The number of CPE Ethics hours that meets the Ethics requirement of such other jurisdiction will be accepted in Oregon, so long as the other jurisdiction requires the licensee to complete an ethics program as a condition of renewal.

(c) **All other active licensees** are required to complete and report four hours of CPE in professional conduct and ethics with each biennial renewal application, which may be satisfied by any ethics program that meets the general CPE requirements described in OAR 801-040-0030.

(d) An active licensee who is not renewing for the first time and whose principal place of business is in another jurisdiction that does not have a professional conduct and ethics CPE requirement must complete the ethics requirement described in subsection (2)(c) of this rule.

(3) **CPE ethics programs.** CPE programs in professional conduct and ethics required by subsection (2)(a) of this rule are eligible for CPE credit if the program is offered by a sponsor registered with the Board and includes information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require an understanding of statutes, rules and case law relevant to all licensees.

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

(4) **Substantial equivalency.** Licensees who are authorized to practice public accountancy in this state under the provisions of substantial equivalency under ORS 673.153 may satisfy the CPE requirements under this section by demonstrating to the satisfaction of the Board that the licensee is in compliance with CPE requirements of the jurisdiction in which the licensee’s principal place of business is located.

(a) If such jurisdiction has no CPE requirement the licensee shall complete and report the CPE requirements under these rules. The requirement to complete four hours of CPE in ethics and professional conduct may also be satisfied by meeting the ethics requirement of the other jurisdiction, and if none, by completing ethics programs described in section (2) of this rule.

(b) Licensees described in this section are required to:

(A) Submit a signed statement that the licensee is in compliance with the CPE requirements of the jurisdiction in which the licensee’s principal place of business is located or, if such jurisdiction has no CPE requirements, the licensee shall complete and report CPE programs as described in OAR 801-040-0010; and

(B) Submit a signed statement that the licensee is in compliance with CPE requirements in professional conduct and ethics of the jurisdiction in which the licensee’s principal place of business is located or, if such jurisdiction has no CPE requirements in professional conduct and ethics, the licensee shall report Ethics CPE programs as described in OAR 801-040-0010(2)(c).

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

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 4-2008, f. 12-30-08, cert. ef. 1-1-09

## 801-040-0090

### Reinstatement Requirements: Lapsed, Suspended or Inactive to Active Status

(1) **Lapsed permits.** Permits that are not properly renewed shall lapse. To reinstate a “lapsed” permit the holder of such permit shall:

(a) Provide a detailed written description of the business and professional activities of the holder of such permit during the period of lapse, stating whether the licensee was holding out as a CPA or PA during the period of lapse;

(b) Submit an application for reinstatement on a form provided by the Board;

(c) Submit payment of the active renewal fee for each renewal period that the permit was lapsed; and

(d) Complete and report the appropriate CPE hours described in this rule, plus a penalty of an additional 16 CPE hours.

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(e) CPE hours submitted for reinstatement must meet the requirements for CPE credit under these rules.

(2) **Permits lapsed within the first renewal period.** Holders of permits that lapse within the first renewal period shall complete and report the number of CPE hours that were required to renew the permit at its last expiration date, including any professional conduct and ethics requirement.

(3) **Permits lapsed more than two, but less than five years.** Holders of permits that lapse more than two, but less than five years shall:

(a) Complete and report 80 CPE hours, which shall be completed within the 12 month period immediately preceding the date of application for reinstatement; and

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, such hours to be completed at a rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(c) Complete and report four CPE hours in professional conduct and ethics.

(4) **Permits lapsed more than five years.** Holders of permits that lapse more than five years shall:

(a) Complete and report 160 CPE hours which shall be completed within the 24 month period immediately preceding the date of application for reinstatement;

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs; and

(c) Complete and report four CPE hours in professional conduct and ethics.

(d) In lieu of meeting the CPE requirements described in this section, the holder of a lapsed permit may elect to take and pass the CPA exam within the five years immediately preceding the date of application for reinstatement. A person who elects this option must meet the requirements of OAR 801-010-0060.

(5) **Inactive permits.** To reinstate a permit from inactive to active status, the holder of such permit shall meet the requirements for reinstatement of lapsed permits described in section (1) of this rule, with the following exceptions:

(a) Payment of the active renewal fee described in subsection (1)(c) of this rule for each renewal period that the permit was inactive is not required for reinstatement from inactive to active status; and

(b) The 16 hour CPE penalty described in subsection (1)(d) of this rule, is not required for applicants reinstating from inactive to active status so long as the reinstatement application is submitted more than two years after the last active renewal.

(6) **Suspended permits.** To reinstate a permit that is suspended under ORS 673.170, the holder of such permit shall:

(a) Provide evidence of satisfaction or completion of all terms and conditions stated in the Order of Suspension; and

(b) Meet the requirements for reinstatement of an inactive permit as stated in this rule.

(7) **Permit holders in other jurisdictions.** Licensees who hold an active permit to practice public accountancy issued under the laws of another jurisdiction, whose principal place of business is in such other jurisdiction, and who wish to reinstate an Oregon permit that has been lapsed or inactive for more than two years shall:

(a) Submit evidence that the applicant holds an active permit to practice public accountancy, in good standing, issued by another jurisdiction; and

(b) Submit payment of the initial permit fee stated in OAR 801-010-0010(2)(a) plus the biennial renewal application fee stated in OAR 801-010-0010(3)(a).

(c) Upon reinstatement, licensee shall complete CPE requirements described in these rules on a pro rata basis, calculated at 3-1/3 hours per month, including the month of reinstatement until the end of the renewal period in which reinstatement occurs.

(8) **24 Hour annual CPE requirement.** Licensees whose permits are reinstated under this rule are required to meet the 24 hour annual CPE requirement at the pro-rated calculation of two (2) CPE hours for each month, including the month of reinstatement, until June 30 of the year in which the licensee is reinstated.

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

Stats. Implemented: ORS 673.165 & 673.210

Hist.: AB 1-1985, f. & cert. ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98;

BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2008, f. 12-30-08, cert. ef. 1-1-09

## Board of Chiropractic Examiners Chapter 811

**Rule Caption:** Changes continuing education rule to address specific course requirements and compliance audits.

**Adm. Order No.:** BCE 3-2008

**Filed with Sec. of State:** 12-23-2008

**Certified to be Effective:** 12-23-08

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 811-015-0025

**Subject:** Allows the OBCE to determine specific continuing education course requirements for an upcoming licensure year at any meeting, provides that a minimum of 10% and up 100% may be audited for compliance.

**Rules Coordinator:** Donna Dougan—(503) 378-5816, ext. 24

### 811-015-0025

#### Continuing Chiropractic Education

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

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

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

(4) The Board may require specific courses as part of a chiropractic physician's annual relicensure hours for an upcoming licensure period.

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

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

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

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

(a) They do not misrepresent or mislead;

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

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

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

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

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

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

(a) Continuing Medical Education(CME);

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



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- (c) Long distance learning courses;
- (d) Being an original author of an article, published in a peer reviewed journal, given in the year of publication;
- (e) Participation in a formal protocol writing process associated with an accredited health care institution or state or government health care agency;
- (f) Participation on an OBCE committee and assisting with a National Board of Chiropractic Examiners (NBCE) examination or NBCE test writing committee;
- (g) Participation in a research project, approved by the Board, related to chiropractic health care directed by an educational institution or other qualified chiropractic organization;
- (h) Teaching courses at an accredited health care institution;
- (i) Teaching chiropractic continuing education courses;
- (j) CPR courses; and
- (k) Instruction related to OAR 811-015-0030, minor surgery/proctology rotation;
- (l) And any other course or activity specifically authorized by the OBCE.
- (10) All licensees are required to keep full, accurate and complete records:
  - (a) A verification of attendance for all CE courses or activities showing hours claimed for relicensure credit, and or proof of completion signed by the sponsor and licensee.
  - (b) Video taped or audio taped courses shall be supported through record keeping with a letter, memo or on a form provided by the Board, that includes the dates and times, vendor's or presenter's name/s, total hours claimed for each course, location, and includes the following statement, "I swear or affirm that I viewed or listened to these continuing education courses in their entirety on the dates and times specified in this report."
  - (c) A copy of a published article including the date of publication;
  - (d) A written record of hours in clinical protocol development and research projects. The record shall include the names and addresses of the institutions involved, name of supervisors, and their signatures verifying hours.
  - (e) For licensees claiming CE hours under the provisions of (9)(h), a record of employment by health care institutions, signed by their supervisor, a copy of the course syllabus if applicable, and verification of hours.
  - (f) For licensees claiming CE hours under the provisions of (9) (i), licensee shall obtain and keep verification of the course taught including, the dates of the course, a syllabus and the sponsoring organization.
  - (g) For licensees claiming CE hours under the provisions of (9)(f), for participation on an OBCE committee and assisting with a National Board of Chiropractic Examiners; (NBCE) examination or NBCE test writing committee, certification from the OBCE or NBCE.
  - (h) For licensees claiming CE hours under the provisions of (9)(k), a record of the dates, topics/procedures, and hours.
- (11) At each renewal the OBCE will generate a random computer list of a minimum of 10% or up to 100% of renewing licensees, who will then have their CE records reviewed to ensure compliance with this rule. Licensees shall respond to this request within 30 days by supplying the OBCE with verification of their CE courses or activities as provided in section 10.
- (12) Any licensee who has submitted inadequate, insufficient, or deficient CE records or who otherwise appears to be in noncompliance with the requirements of this rule will be given written notice by the OBCE and will have 30 days from the date of notice to submit additional documentation, information or written explanation to the OBCE establishing the licensee's compliance with this rule.
- (13) At its discretion, the Board may audit by attendance the content of any program in order to verify the content thereof. Denial of an audit is grounds for disapproval.
- (14) Any chiropractic physician seeking a hardship waiver from their continuing education requirements shall apply to the Board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that year. Specific details of the hardship must be included. The Board must make a finding that a hardship exists.
- (15) The Board shall maintain and make available through its WEB page and mailings to licensees a list of disapproved courses, if any. The Board may disapprove a course or CE activity after giving the sponsor and/or licensees the opportunity to provide additional information of compliance with the criteria contained in this rule, and opportunity for contested case hearing under the provisions of ORS 183.341 if requested. Any CE sponsor or licensee may request the Board to review any previously disapproved course at any time.

Stat. Auth.: ORS 684.155

Stats. Implemented: ORS 684.092

Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 1-1984, f. 7-16-84, ef. 8-1-84; 2CE 5-1985, f. 11-13-85, ef. 12-1-85; CE 1-1996, f. & cert. ef. 2-28-96; CE 4-1996(Temp), f. & cert. ef. 9-27-96; CE 1-1997, f. & cert. ef. 3-4-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2002, f. & cert. ef. 2-6-02; BCE 1-2007, f. & cert. ef. 11-30-07; BCE 3-2008, f. & cert. ef. 12-23-08

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## Board of Licensed Professional Counselors and Therapists Chapter 833

**Rule Caption:** Requirements for continuing education, experience, code of ethics, and license renewal dates.

**Adm. Order No.:** BLPCT 2-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 12-26-08

**Notice Publication Date:** 7-1-2008

**Rules Amended:** 833-020-0050, 833-020-0164, 833-025-0050, 833-030-0001, 833-030-0010

**Rules Ren. & Amend:** 833-060-0001 to 833-060-0011, 833-060-0001 to 833-060-0021, 833-060-0001 to 833-060-0031, 833-060-0001 to 833-060-0041, 833-060-0001 to 833-060-0051, 833-060-0001 to 833-060-0061, 833-060-0001 to 833-060-0071

**Subject:** Code of Ethics: Renumbers 833-060 for ease of reading and understanding; clarifies, adds to, and strengthens expectations for ethical practice of licensed professional counselors and licensed marriage and family therapists.

Continuing Education 833-025-0050: expands coursework areas, changes the amount of CEUs for some activities, clarifies documentation requirements, and adds a requirement for ethics training of 6 clock hours every two years.

Supervision 833-020-0050: Requires that supervisors of interns working toward licensed professional counselor status have been licensed in Oregon in the mental health field for at least 3 years.

Practice requirements registered interns 833-020-0164: Eliminates the requirement to have different supervisors for different practices. Amends wording about use of terms for interns; clarifies number of minutes for hour and half hour.

License renewal 833-030-0001 and 833-030-0010: Changes license renewal date from April 1 of each year to renewal by licensee birth month.

**Rules Coordinator:** Becky Eklund—(503) 378-5499, ext. 26

### 833-020-0050

#### Experience Requirements for Licensure as a Professional Counselor

To qualify for licensure as a professional counselor under ORS 675.715(3) and 675.720, an applicant shall have completed the equivalent of three years of full-time supervised counseling experience which shall consist of:

(1) The applicant must have completed no less than 2,400 supervised direct client contact hours of counseling.

(2) Direct client contact hours are defined as only those treatment hours that are therapeutic or a combination of assessment and subsequent therapeutic interactions with clients; and

(a) Must have been face to face with a client or clients, except that up to 200 client contact hours may have been via telephone;

(b) Must have been obtained after receipt of the qualifying graduate degree, except that up to 800 client contact hours may have been completed during the clinical portion of the qualifying degree program; and

(c) Must include no less than 480 post-degree client contact hours completed within 60 months immediately prior to the application for licensure.

(3) The supervision must have taken place concurrently, which means within the same calendar month as the completed direct client contact hours and:

(a) Must have been the result of a professional relationship between a qualified supervisor and a counselor. Such relationship involves discussions based on case notes, charts, records, and available audio or visual tapes. The supervisee presents assessments and treatment plans for the clients being seen. The supervisor focuses on the appropriateness of the plans and the supervisee's therapeutic skill. In contrast to consultation, the supervisor has the authority to direct treatment plans. In contrast to therapy, the supervisor will identify counter-transference issues and develop a plan for the supervisee to work through those issues independently.



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(b) Must have been conducted in a professional setting, face to face, one to one, except:

(A) Up to 10 percent of the individual supervision hours may have been conducted by telephone;

(B) Up to 50 percent of the supervision may have been received in a group setting, which:

(i) Included no more than ten (10) supervisees for supervision taking place before July 1, 1998 or six (6) supervisees for supervision taking place after July 1, 1998;

(ii) Where the leadership did not shift from one supervisor to another; and

(iii) Was not a staff or team meeting, intensive training seminar, discussion group, consultation session, or quality assurance or review group.

(c) Must have totaled no less than two (2) hours of supervision for months where 45 or less direct client contact hours were completed; or totaled no less than three (3) hours of supervision for months where 46 or more direct client contact hours were completed.

(4) The supervisor, at the time of supervision must have:

(a) Held a master's degree in counseling or graduate degree judged equivalent by the Board;

(b) Completed three years of post-graduate clinical experience as an Oregon licensed professional counselor or other Oregon licensed mental health professional;

(c) Completed 30 clock hours of training in supervision theory and practice through post-master's workshops or post-master's graduate level academic coursework for any supervision hours provided after June 30, 1992; and

(d) Been certified as a National Certified Counselor (NCC), Certified Clinical Mental Health Counselor (CCMHC), Certified Rehabilitation Counselor (CRC); or Certified Career Counselor (CCC); or

(e) Held a license as a professional counselor in the State of Oregon or held an Oregon or other state certification or licensure judged comparable by the Board, such as Oregon standard school counselors or Oregon psychologist associates or those state licensed as clinical psychologists, clinical social workers, and marriage and family therapists;

(f) In lieu of subsections (a), (b), (c), (d), and (e), been an American Association for Marriage and Family Therapy approved supervisor, an approved clinical supervisor credentialed by the Center for Credentialing and Education, or diplomate of the American Pastoral Counselors Association.

(g) Been someone other than a spouse or relative by blood or marriage or a person with whom the applicant has or had a personal relationship.

Stat. Auth.: ORS 675.715 & 675.785

Stats. Implemented: ORS 675.715 & 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 2-1996, f. 10-30-96, cert. ef. 11-1-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2002, f. & cert. ef. 3-1-02; BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; BLPCT 2-2008, f. & cert. ef. 12-26-08

### 833-020-0164

#### Practice Requirements Registered Interns

(1) Registered interns may indicate registration or use the title "registered intern", "LPC intern", "LMFT intern", or any permutation in connection with a practice that is covered by an approved plan.

(2) Registered interns will defer selection of part-time or full-time plan based on estimated client contact hours to the supervisor or team of supervisors. If estimates fall between the two types of plan, the supervisor(s) and intern must commit to meet the terms for a full-time plan.

(3) Supervision meetings must be no less than one hour, defined as no less than 50 minutes. Supervision over one hour must be in increments of no less than 25 minutes.

(4) Supervision meetings must take place at least twice during the month, and in different weeks; although petitions for exceptions based on geographic hardship will be considered.

(5) An approved plan for a single practice, such as private practice or employment by one agency, offering services at one or more sites, may have no more than two supervisors at any given time.

(6) An approved plan may cover up to three separate practices, such as private practice and employment by two different autonomous programs, at any given time, if the practices are at different sites and supervised by one or more supervisors or team of supervisors.

(7) A team of supervisors may consist of no more than two supervisors who have accepted responsibility for providing supervision over the same client caseload, for example alternating supervision or one offering group supervision and the other individual supervision, at the approved site.

(8) Registered interns must receive supervision for and report all client contact hours at places of practice listed as part of their approved plan.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.720

Hist.: BLPCT 1-2002, f. & cert. ef. 3-1-02; BLPCT 2-2008, f. & cert. ef. 12-26-08

### 833-025-0050

#### Continuing Education and Supervision Requirements

(1) Effective after renewal date April 1, 1998, licensees shall complete 40 clock hours of approved continuing education every two license years, on even numbered years, as a condition of renewal except:

(a) For the first renewal after initial licensure, if first renewal is on an even-numbered year which will require no continuing education hours; or after the second renewal after initial licensure, if second renewal is on an even-numbered year which will require only 20 clock hours completed between licensure and second renewal;

(b) Following Board approval of a petition for waiver or extension of time based on documentation showing that the licensee was prevented from completing the requirements because of serious illness or disability.

(c) Following a contractual agreement with the Board that the licensee will not be practicing counseling or marriage and family therapy for an extended period of time because the licensee is retired; on maternity leave; or voluntarily not working; and that the licensee will not resume practice without a Board-approved plan for participating in 20 clock hours of continuing education or clinical supervision.

(d) A "clock hour" shall be defined as one hour spent in a program meeting the requirements for continuing education. Clock hours exclude refreshment breaks, receptions and other social gatherings, and meals that do not include an approved program:

(e) For academic courses fifteen clock hours shall be granted for one semester hour; ten clock hours shall be granted for one quarter hour;

(f) The number of clock hours granted for a program offered by an approved provider, as defined in section (4) of this rule, will be determined by the definition of clock hour in this rule.

(2) Continuing education content must focus on increasing knowledge and/or skills in the following areas relevant to the field:

(a) Counseling theory & techniques;

(b) Human growth and development;

(c) Social and cultural foundations in counseling;

(d) The helping relationship;

(e) Group dynamics in counseling;

(f) Life style and career development;

(g) Diagnostic appraisal/assessment of individuals;

(h) Research and evaluation;

(i) Professional orientation and ethics;

(j) Professional supervision training;

(k) Disability and life transitions.

(l) Theory and techniques of marital and family therapy;

(m) Diagnostic appraisal and assessment of individuals in marital and family therapy;

(n) Human development and family studies;

(o) Ethics and professional orientation;

(p) Research;

(q) Professional supervision training

(r) Social and cultural foundations in marital and family therapy.

(3) Six clock hours of continuing education in ethics is required each reporting period.

(4) Approvable continuing education credits may be obtained in the following ways:

(a) Continuing education activities with no limits on continuing education units.

(A) Attending college or university courses — 15 clock hours per semester credit and 10 clock hours per quarter credit.

(B) Seminars, workshops, conferences and/or trainings may be "live" or offered through distance learning technology. Distance learning trainings must be offered or approved by a provider acceptable to the Board e.g., NBCC.

(C) Home study from approved providers must be offered or approved by a provider acceptable to the Board e.g., NBCC.

(b) Continuing education activities for which you can obtain a maximum of 20 continuing education units within a two year period.

(A) Publication activities include:

(i) Five credits per article or review in a refereed journal that is directly related to counseling.

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(ii) Five credits per chapter in edited books, 20 credits for authorship of an entire book.

(iii) Five credits per 30 minutes of initial video production directly related to counseling.

(iv) Five credits for reviewing a book proposal.

(v) Five credits for each year of service on an editorial board of a professional counseling journal.

(B) Professional presentations. Credit is given for the initial research and development of a professional presentation. The number of credits given is twice the number of hours spent making the presentation.

(C) Leadership in the profession — 10 credits a year for the following:

(i) Serving as an officer of a state or national counseling organization;

(ii) Serving as a member of a state counseling/therapy licensing board or national certification board;

(iii) Chairing a national counseling conference or convention.

(4) Receiving supervision. One credit/one clock hour for supervision received from a supervisor who meets the Board's standards on supervision, for a maximum of 10 continuing education activities within a two year period.

(5) An approvable continuing education program is one designed and offered by an agency or institution that is recognized as an approved provider of continuing education units e.g., NBCC. Approved programs include:

(a) Academic courses offered in accredited degree counseling or marriage and family therapy programs;

(b) Presentations sponsored by counseling related departments of accredited educational institutions; national, regional, state, or local professional organizations or associations; public or private human services agencies or organizations; or individuals that meet all of the following approved provider guidelines:

(A) Program is presented by competent individuals as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience. Presenters should have an identifiable involvement with human services;

(B) Program meets the professional needs of the licensee's intended clientele;

(C) Program has a minimum duration of one clock hour;

(D) Except for non-classroom distance learning, program is offered in a place which is accessible to persons with disabilities;

(E) Distance learning program includes mechanism for evaluation, measurement, or confirmation of exchange of information;

(F) Programs approved by organizations such as: National Association of Social Workers, National Board for Certified Counselors, Oregon Psychological Association, Commission on Rehabilitation Counselor Certification, Art Therapy Credentials Board, American Art Therapy Association, American Association for Marriage and Family Therapy, Commission of Rehabilitation Counselor Certification, and American Counseling Association.

(c) Content of programs are consistent with OAR 833-025-0050(2).

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.725 & 675.785

Hist.: LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833-030-0001

### Effective and Expiration Dates of Licenses

(1) Initial licenses shall be issued for no more than one year, expiring during the month of licensee's birth.

(2) Date of issue shall be the date all qualifications for licensure are determined to have been met.

(3) Licenses shall not be issued without payment of the required initial license or renewal fees.

(4) A licensee may voluntarily surrender a license only upon the express written consent of the Board. Such license will not be subject to renewal.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.725 & 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833-030-0010

### License Renewal/Late Renewal

(1) Renewal of a license may be made by payment of the renewal fee no more than 45 days before, or during the renewal month accompanied by:

(a) The completed renewal form provided by the Board which shall include a sworn statement that there is no reason for denial of renewal;

(b) Continuing education information detailing compliance with the requirements, if applicable;

(c) An updated, professional disclosure statement, if renewal information indicates that the one on file with the Board can no longer be approved because it may be construed to contain false, incomplete or misleading information.

(2) A licensee who has not renewed his/her license or who has not met the requirements for renewal during licensee's month of birth, may no longer renew the license.

Stat. Auth.: ORS 675.785(1)

Stats. Implemented: ORS 675.720(4) & 1999 OL Ch. 463 amending ORS 675.725

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1994, f. 12-30-94, cert. ef. 1-1-95; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-1999, f. 12-29-99, cert. ef. 12-31-99; BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833 060 0011

### General Purpose and Scope

(1) This code constitutes the standards against which the required professional conduct of licensed professional counselors and marriage and family therapists is measured. It has as its goal the welfare and protection of the individuals and groups with whom counselors and therapists work. This code applies to the conduct of all licensees, registered interns and applicants, including the applicant's conduct during the period of education, training, and employment which is required for licensure. Violation of the provisions of this code of ethics will be considered unprofessional or unethical conduct and is sufficient reason for disciplinary action, including, but not limited to, denial of licensure.

(2) If ethical responsibilities appear to conflict with law, regulations, or other governing legal authority, licensees are to make known their commitment to their ethical responsibilities and take steps to resolve the apparent conflict. If demands of an organization with which a licensee is affiliated conflicts with any aspect of the code of ethics, the licensee must clarify the nature of the conflict, make known their commitment to this code and resolve the conflict in a way that permits adherence to this code of ethics.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833 060 0021

### Responsibility

(1) A licensee's primary professional responsibility is to the client. A licensee makes every reasonable effort to advance the welfare and best interests of all clients for whom the licensee provides professional services. A licensee respects the rights of those persons seeking assistance and makes reasonable efforts to ensure that the licensee's services are used appropriately:

(2) A licensee recognizes that there are other professional, technical, and administrative resources available to clients. The licensee makes a reasonable effort to provide referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services or when the client requests a referral.

(3) Licensees do not give or receive commissions, rebates or any other form of remuneration when referring clients for professional services.

(4) A licensee seeks appropriate professional assistance for the licensee's own personal problems or conflicts that are likely to impair the licensee's work performance or clinical judgment.

(5) A licensee provides supervision only when the licensee's professional competence is sufficient to meet the needs of the trainee or intern. A licensee does not permit a trainee or intern under the licensee's supervision to perform, nor purport to be competent to perform, professional services beyond the trainee's or intern's level of training and accepts responsibility for the effects of the actions of the trainee or intern of which they should be aware.

(6) A licensee does not practice under the influence of alcohol or any controlled substance not prescribed by a physician, or if incapacitated by habitual or excessive use of intoxicants, drugs or controlled substances.

(7) A licensee does not practice when adversely influenced by either physical or emotional impairment that would interfere with their ability to provide professional services.

(8) A licensee abides by all applicable statutes and administrative rules regulating the practice of counseling or therapy or any other applica-

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ble laws, including, but not limited to, the reporting of abuse of children or vulnerable adults.

(9) A licensee does not condone or engage in discrimination on the basis of age, color, culture, disability, ethnicity, national origin, gender, race, religion, sexual orientation, marital status, or socioeconomic status.

(10) A licensee does not provide services to a client when the licensee's objectivity or effectiveness is impaired. If a licensee's objectivity or effectiveness becomes impaired during a professional relationship with a client, the licensee notifies the client that the licensee can no longer serve the client professionally and makes a reasonable effort to assist the client in obtaining other professional services.

(11) A licensee respects the right of a client to make decisions and helps the client understand the consequences of these decisions. A licensee advises a client that all decisions are the responsibility of the client.

(12) A licensee displays in a prominent place, available to clients, a Board issued license.

(13) A licensee obtains written informed consent from the client or legal representative of the client for rendering professional services. Informed consent constitutes informing the client as early in the therapeutic relationship as possible of the nature and anticipated course of therapy, services and approaches to be used, potential risks or experimental methods proposed, alternatives for treatment, fees, involvement of third parties, limits of confidentiality, and the client's right to accept or refuse any and all therapeutic treatment.

(14) A licensee makes available as part of the disclosure statement a bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

(a) To expect that a licensee has met the minimum qualifications of training and experience required by state law;

(b) To examine public records maintained by the Board and to have the Board confirm credentials of a licensee;

(c) To obtain a copy of the Code of Ethics;

(d) To report complaints to the Board;

(e) To be informed of the cost of professional services before receiving the services;

(f) To be assured of privacy and confidentiality while receiving services as defined by rule or law, including the following exceptions:

(A) Reporting suspected child abuse;

(B) Reporting imminent danger to the client or others;

(C) Reporting information required in court proceedings or by client's insurance company or other relevant agencies;

(D) Providing information concerning licensee case consultation or supervision; and

(E) Defending claims brought by the client against licensee;

(g) To be free from being the object of discrimination on any basis listed in subsection (9) of this rule while receiving services.

(15) A licensee terminates a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests. Whenever possible prior to termination, a licensee provides pre-termination counseling and recommendations and alternatives for the client.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90;

LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94;

LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98;

Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833 060 0031

### Client Welfare

(1) Licensees strive to benefit those with whom they work and take care to do no harm. In their professional actions, licensees seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons and shall hold the welfare and interests of clients as primary.

(2) Licensees take reasonable steps to avoid harming their client, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(3) The primary obligation of licensees is to respect the integrity and promote the welfare of their clients, including treating the client at all times in a caring, fair, courteous and respectful manner. This is particularly true for vulnerable populations such as children, seniors or clients with disabilities.

(4) Licensees actively attempt to understand the diverse cultural backgrounds of the clients with whom they work. This includes, but is not limited

to, learning how the licensee's own background and identity impacts the licensee's values and beliefs about the counseling process.

(5) Licensees do not engage in physical contact with clients when there is a possibility of physical or psychological harm from the contact.

(6) Licensees avoid actions or words that clients could reasonably interpret as demeaning or derogatory, including, but not limited to, coarse or harsh language directed at the client.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90;

LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94;

LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98;

Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833 060 0041

### Integrity

(1) A licensee acts in accordance with the highest standards of professional integrity and competence. A licensee is honest in dealing with clients, students, trainees, colleagues, related third parties, and the public.

(2) Licensees are aware of their influential positions with respect to students, employees, supervisees, and clients, and they avoid exploiting the trust and dependency of such persons. Licensees make every effort to avoid conditions and multiple relationships with clients that could impair professional judgment or increase the risk of exploitation. Such relationships include, but are not limited to, business or personal relationships, sexual relationship, relatives, students, employees, or supervisees.

(3) A licensee does not enter into an employer, supervisor, or other relationship where there is potential for exercising undue influence on any client. This includes the sale of services or goods that will exploit the client for financial gain or personal gratification of the licensee or a third party.

(4) A licensee shall not engage in or solicit sexual acts or a sexual relationship with a supervisee.

(5) A licensee does not engage in or solicit sexual acts or a sexual relationship with a client or with individuals the licensee knows to be immediate relatives, guardians, supervisees, or significant others of current clients, or with a former client within three years since the rendering of professional services.

(6) A licensee does not engage in or solicit sexual acts or a sexual relationship with a former client after three years from the termination of services if such act or solicitation could exploit the client. Exploitation may be indicated by such factors as the time elapsed between the termination of the professional relationship and the beginning of the sexual relationship, nature and duration of therapy, circumstances of termination of professional relationship, client personal history, client's current mental status, likelihood of adverse impact on client, any statements or actions made by the licensee during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship, and whether the licensee attempted to protect the client by referral or consultation. Licensees do not accept as clients those with whom they have engaged in sexual intimacies.

(7) A licensee does not enter into an employment, business, supervisory, or personal relationship, or one that involves the exchange of goods and services, with a former client if exploitation can be demonstrated by review of such factors as amount of time that has passed, nature and duration of therapy, circumstances of termination of professional relationship, client's personal history, client's current mental status, likelihood of adverse impact on client, and whether client encouraged a post-treatment relationship during the professional relationship.

(8) A licensee does not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the licensee's evaluation or treatment of the client. Regardless of the source of payment, the licensee's first obligation is to the client.

(9) A licensee does not engage in sexual or other harassment of a client, former client, or supervisee. A licensee does not engage in any form of communication or physical behavior that is sexually suggestive, seductive, or demeaning to the client or former client.

(10) A licensee does not use the counseling relationship to further personal, religious, political, sexual, or financial interests.

(11) A licensee informs a client of a divergence of interests, values, attitudes, or biases between a client and the licensee that is sufficient to impair their professional relationship. Either the client or the licensee may terminate the relationship.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90;

LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94;

LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98;



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Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833 060 0051

### Confidentiality

(1) A licensee holds in confidence all information obtained in the course of professional services, as within the limits of the setting, such as a public agency. A licensee safeguards client confidences as permitted by rule or law.

(2) A licensee does not use any confidence of a client to the client's disadvantage.

(3) A licensee, including employees and professional associates of the licensee, does not disclose any confidential information that the licensee, employee, or associate may have acquired in rendering services except as provided by rule or law. All other confidential information is disclosed only with the written informed consent of the client.

(4) A licensee is responsible for being aware of the state and federal regulations concerning confidentiality and for informing clients of the limits of confidentiality as a part of informed consent for services in the context of couple, family, or group treatment. A licensee does not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(5) Whenever a licensee provides services to groups of clients such as couples, families or therapy groups, special care must be taken related to issues of confidentiality. In group therapy, confidentiality issues are to be discussed in the beginning of the group. The parameters of confidentiality within marriage and family therapy are to be discussed early in the counseling process and a clear understanding achieved with all involved.

(6) Whenever a licensee's services are requested or paid for by one client for another, the licensee informs both clients of the licensee's responsibility to treat any information gained in the course of rendering the services as confidential information.

(7) A licensee limits access to client records and informs every individual associated with the agency or facility of the licensee, such as a staff member, student, or volunteer, that access to client records must be limited to only the licensee with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the written informed consent of the client. Client records are defined as the records of the counseling or therapeutic relationship, including interview notes, assessments, diagnosis, appraisals, correspondence, or recordings.

(8) A licensee maintains the records of a client after the professional relationship between the licensee and the client has ceased and informs clients as to how long records are retained. The licensee stores and disposes of records in ways that maintain confidentiality. The licensee makes advance provision for the confidential disposition of records in the event the licensee is unable to do so for reasons such as illness or death.

(9) A licensee discloses to the Board and its agents any client records that the Board and its agents consider germane to a disciplinary proceeding. The general requirement that licensees keep information confidential does not when:

(a) Disclosure is required to prevent clear and imminent danger to the client or others; or

(b) Legal requirements demand that confidential information must be revealed.

(10) A licensee must obtain written informed consent from each client before electronically recording sessions with that client or before permitting third party observations of their sessions.

(11) A licensee adequately disguises the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.

(12) A licensee provides clients reasonable access to records concerning them and should take due care to protect the confidences of others contained in those records, or when information from others about the client could result in harm to that person or persons upon disclosure to the client. Following guidelines set forth in ORS 192.518(2) and 675.765(1), unless otherwise ordered by the court, parents shall have access to the client records of juveniles who are receiving professional services from the licensee.

(13) When a licensee is unclear on professional issues or standards of practice, consultation is to be obtained while protecting any confidentiality issue that may be involved.

(14) Licensees proceed cautiously when asked to provide services to a client currently seeing another professional. Consideration is given to the client's welfare and the situation. Care is given to minimize the risk of

confusion and conflict; and when appropriate, the other service provider is consulted. It is not ethical to provide the same therapeutic service that is simultaneously being provided by another professional without collaboration regarding the best interests of the client.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833 060 0061

### Conduct and Competence

(1) A licensee accepts the obligation to conform to higher standards of conduct in the capacity of a counseling professional. The private conduct of a licensee is a personal matter to the degree that it does not compromise the fulfillment of professional responsibilities. A licensee will respect the traditions of the profession, and refrain from any conduct that would bring discredit to the profession.

(2) Licensees correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the licensee's qualifications, services, or products. A licensee does not advertise in a way that is false, fraudulent, or misleading to the public. Testimonials from current clients are not solicited for advertising or other purposes due to the client's vulnerability to undue influence. A licensee does not engage in any conduct likely to deceive or defraud the public or the Board. A licensee does not participate in, condone, or become associated with dishonesty, fraud, deceit, or misrepresentation. A licensee reports to the Board any civil lawsuit brought against the licensee that relates in any way to the licensee's professional conduct and notifies the Board of any disciplinary action or loss of a mental health professional or state license, certification, or registration.

(3) A licensee files a complaint with the Board when the licensee has reason to believe that another licensee is or has been engaged in conduct that violates law or rules adopted by the Board. This requirement to file a complaint does not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other counselor or therapist. In that case, the client-therapist confidentiality supersedes the licensee's requirement to report the other therapist. However, this does not relieve a licensee from the duty to file any reports required by law concerning abuse of children or vulnerable adults. Licensees do not initiate, participate in, or encourage the filing of ethics complaints that are unwarranted or intended to harm a counselor/therapist rather than to protect clients or the public.

(4) A licensee does not engage in sexual or other harassment or exploitation of clients, students, trainees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in disciplinary proceedings. A licensee cooperates with the Board, or any committee or representative of the Board, in any investigation it may pursue relating to licensee misconduct or violation of the law or rules of the Board. Failure to cooperate is an ethics violation.

(5) A licensee understands the areas of competence of related professions and acts with due regard for the needs, special competencies, and obligations of colleagues in other allied professions, and does not disparage the qualifications of any colleague.

(6) A licensee recognizes the importance of a clear understandings on financial matters with clients. Arrangements for fees and payments are made at the beginning of the counseling or therapeutic relationship. When a client presents financial hardship, the licensee will make reasonable effort to direct the client to possible affordable options. Licensees do not withhold records under their control that are requested by the client solely because payment has not been received for services. Licensees who work in an organizational setting do not divert clients to the licensee's own private practice unless it is in the best interests of the client in the opinion of the client and the organization.

(7) A licensee makes certain that the qualifications of persons in a licensee's employ are represented in a manner that is not false or misleading.

(8) A licensee does not perform, nor pretend to be able to perform, professional services beyond the licensee's field or fields of competence based on their education, training, supervision, consultation, study or professional experience. Licensees are responsible for keeping current in areas of competence. When working in emerging areas of the profession, the licensee ensures competence through relevant education, training, supervised experience, consultation, or study.



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(9) A licensee does not misrepresent professional qualifications, education, experience, or affiliations.

(10) A licensee does not provide what is, or may be reasonably considered, inappropriate, unnecessary, or inadequate treatment or counseling/therapeutic services. A licensee practices within accepted professional standards based on recognized knowledge through research and theoretical best practices.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

## 833-060-0071

### Assessment, Measurement, Research and Consulting

(1) Licensees who conduct professional services related to counseling do so with regard to high ethical standards.

(2) Licensees conduct proper assessments of clients within their level of competence and base findings on reliable information and techniques sufficient to substantiate their conclusions. Licensees administer, adapt, score, interpret or use assessment techniques, such as tests and measurement instruments, only with training and consistency with therapeutic objectives.

(3) Licensees who conduct research do so with the welfare of participants of primary importance. Ethical research includes informed consent from participants, institutional approval, when appropriate, including measures to protect research participants, and debriefing participants as soon as possible regarding the nature, results and conclusions of the research. The results of research are reported accurately without fabrication or unreported errors.

(4) Licensees who consult or provide services where the client is an organization do so with a high degree of self-awareness of their own values, knowledge, skills, limitations and goals and match these factors with the needs and goals of the organization. It is the licensee's responsibility to ensure agreement on the issues, goals and predicted consequences of consulting interventions.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08; Administrative correction 12-22-08; Renumbered from 833-060-0001, BLPCT 2-2008, f. & cert. ef. 12-26-08

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## Board of Pharmacy Chapter 855

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

**Adm. Order No.:** BP 4-2008(Temp)

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-5-09 thru 7-3-09

**Notice Publication Date:**

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

**Subject:** This new chapter of rules will provide a legal structure for licensees and registrants of the Board, and public health officials when there is a public health emergency that requires extraordinary measures to protect public health. The rules provide for a storage and distribution system for medications received in Oregon from Strategic National Stockpile as well as for emergency immunization procedures. The rules also provide for emergency dispensing when patients do not have access to their prescribing physician. The rules give a framework for licensees from other states to work in Oregon under their existing license as authorized in the Emergency Management Assistance Compact and the Pacific Northwest Emergency Management Arrangement ratified in Chapter 25 Oregon Laws 2008 Special Session.

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-007-0010

### Declaration of Emergency

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

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

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

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

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

(2) When a state of emergency or a public health emergency has been declared such that these rules are in effect, if there is any contradiction between these rules and the rules in Divisions 19, 25 and 41, these rules shall govern, otherwise rules in those divisions shall continue to apply.

Stat. Auth.: ORS 689.205, 401.043, 433.441 & 401.065

Stats. Implemented: 2008 OL Ch. 25 & ORS 401.055

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

## 855-007-0020

### Application

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

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

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

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

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented: 2008 OL Ch. 25

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

## 855-007-0030

### Definitions

(1) Emergency Management Assistance Compact (EMAC) means the compact for mutual assistance that was ratified by Congress and signed by all states, and is codified in ORSW 401.043.

(2) "Emergency Prescription" means a record that is created in a pharmacy that records the dispensing of a refill of a medication, or a new or modified medication therapy to a patient in the absence of a valid prescription.

(3) "Emergency Prescription Drug Order" means an order issued by the State Public Health Officer during a Public Health Emergency for pharmacists to dispense designated prescription drugs to treat or provide prophylaxis to large numbers of patients designated by OSPHD protocols.

(4) "Medications": In this division of rules, the term "medications" means drugs or vaccines or medical devices, or any combination of these terms.

(5) "Mobile Pharmacy" means a pharmacy that is self propelled or movable by another vehicle that is self propelled.

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(6) "Oregon State Public Health Division" (OSPHD) means that division of the Oregon Department of Human Services (DHS) that is responsible for planning for and responding to a public health emergency.

(7) "Pacific Northwest Emergency Management Arrangement" (PNEMA) means the compact, ratified in Chapter 25 Oregon Laws 2008, between the states of Alaska, Idaho, Oregon and Washington, and the Province of British Columbia, and Yukon, to provide mutual assistance in an emergency or public health emergency.

(8) "Public Health Emergency" means an imminent threat or occurrence of an illness or health condition caused by terrorism, bioterrorism, epidemic or pandemic disease, novel and highly fatal infectious agent or biological toxin, or natural or man-made disaster, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability that is beyond the capacity of local government or non-governmental organizations to resolve.

(9) "State of Emergency" means a governmental declaration, usually issued because of a Public Health Emergency or a natural or human-caused disaster that may authorize the suspension of certain administrative rules, alert citizens to alter their normal behaviors, and direct government agencies to implement emergency preparedness plans.

(10) "Strategic National Stockpile" (SNS) means the US Government stockpile of antiviral medications and other medications and medical supplies that can be made available to a state in an emergency.

(11) "Temporary Pharmacy" means a facility established during a Public Health Emergency or State of Emergency to temporarily provide pharmacy services within or adjacent to an area covered by a State of Emergency.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented: 2008 OL Ch. 25

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

### 855-007-0040

#### Delegation of Authority

In this division of rules, any authority vested in the Board may be exercised by the Executive Director, any person acting as Executive Director in his absence or incapacity, or any person he designates to make such decisions on his behalf.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.165

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

### 855-007-0050

#### Emergency Licensure

(1) Article V of ORS 401.043 (EMAC) and Article V of Annex B of PNEMA provide that whenever a person holds a license, certificate or other permit issued by a signatory to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving signatory, the person is deemed to be licensed, certified or permitted by the signatory requesting assistance to render aid involving the skill to meet an emergency or disaster, to the extent allowed by law and subject to limitations and conditions as the requesting signatory prescribes by executive order or otherwise.

(2) When an emergency has been declared, a drug outlet may employ a pharmacist, intern or pharmacy technician who does not hold a license issued by the Board, provided that the individual provides evidence that they hold a comparable license issued by any other state or signatory to PNEMA or EMAC.

(3) In an emergency, the Board may grant an emergency temporary license to a licensee of the board of pharmacy of any state, province, foreign state or political sub-division that is not a signatory to PNEMA or EMAC as follows:

(a) A pharmacist, intern, pharmacy technician or certified pharmacy technician who holds an active license in another state, province, foreign state or political sub-division that is not suspended or restricted for any reason and who is sponsored by a pharmacy that has an active registration from the Board may be granted an emergency temporary license subject to approval by the Board of an application that contains:

(A) The name, permanent address and phone number of the applicant;

(B) The license number and state, province or political sub-division of permanent licensure;

(C) The name and license number of the sponsoring Oregon pharmacy; and

(D) Any other information requested by the Board.

(b) The emergency temporary license issued under these rules shall be valid for a period determined by the Board, but not exceeding six months. If the emergency still exists after six months, the Board may renew any emergency temporary license for an additional six months.

(c) The Board shall notify the sponsoring pharmacy of the approval of each emergency temporary license.

(d) A licensee granted an emergency temporary license under this rule may only practice in the sponsoring pharmacy or a pharmacy under common ownership with the sponsoring pharmacy, except that the licensee may transfer to another pharmacy that is not under common ownership with the sponsoring pharmacy, provided that they notify the Board within three days.

(4) Inactive License Reactivation: In an emergency, the Board may allow a pharmacist whose license has been inactive for no more than two years to reactivate their license without completing any required continuing education. The license will revert to an inactive status at the end of six months unless all required continuing education has been completed.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented: 2008 OL Ch. 25 & ORS 689.151

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

### 855-007-0060

#### Emergency Medication Distribution and Storage

(1) General: When an emergency is declared that requires medications from the Strategic National Stockpile (SNS), these will be delivered to a state Receipt, Staging and Storage center (RSS) for further distribution to predetermined Points of Dispensing (PODs) selected by OSPHD.

(2) Storage of medications from SNS:

(a) The RSS is authorized to store any medications from the SNS prior to and during an emergency without any registration from the Board. This authority to possess medications shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused medications have been completed.

(b) PODs are authorized to store any medications from the SNS during an emergency without any registration from the Board. This authority to possess medications shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused medications have been completed.

(3) Repackaging: If it is necessary to repackage medications into unit-of-use regimen packages, this will be done at RSS under Centers for Disease Control (CDC) protocols as follows:

(a) Repackaging equipment will be provided by SNS;

(b) Staff from the CDC Technical Advisory Response Unit (TARU) will train the repackaging team members on the use of the equipment and will provide team leadership.

(c) OSPHD will establish procedures and provide team members.

(d) Unit-of-use regimens shall be labeled in accordance with SNS protocols as follows:

(A) Official health agency name, city and state;

(B) Prescriber's name — when using State protocols prescriber's name will be "State Protocol";

(C) Date repackaged;

(D) Quantity of medications in the regimen;

(E) Prescription number and lot number of the drug;

(F) Number for 24-hour telephone line;

(G) Patients name left blank — to be filled in by dispenser.

(4) Distribution: SNS medications shall be distributed from PODs in accordance with the dispensing procedures issued by OSPHD in the Standardized Point of Distribution Field Operation Guide.

(5) Administration: The POD supervisor or approved health care provider shall follow protocols approved by OSPHD or Centers for Disease Control (CDC) for distribution or administration of medications from SNS.

(6) Returns: At the conclusion of the emergency, all such medications are to be returned to the RSS or other designated location under protocols issued by OSPHD.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented:

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

### 855-007-0080

#### Emergency Immunization

When these rules are in effect because of a Public Health Emergency that requires the distribution and administration of antiviral medications, the following principles and procedures shall apply:

(1) The distribution of antiviral medications is to be in accordance with the Antiviral Distribution Plan promulgated by OSPHD as part of the Public Health Pandemic Influenza Plan.

(2) Local and county health departments (LHD) are authorized to store medications received from RSS, and to distribute these to designated Treatment Centers (TC) that may include but are not limited to:

(a) LHD;

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- (b) Clinicians;
- (c) Community health clinics;
- (d) Independent and chain pharmacies;
- (e) Hospitals and other health care facilities;
- (f) Temporary pharmacies;
- (g) Mobile pharmacies;
- (h) Tribal health care facilities;

(4) A facility designated as a Treatment Center may possess, dispense and administer antiviral medications during the declared emergency. All such medications shall be stored in accordance with manufacturers' guidelines.

(5) The designated health-care provider at a Treatment Center shall be responsible for administration, distribution and tracking of antiviral medications in accordance with procedures established by OSPHD. These duties may be performed by a pharmacy technician when under the supervision of a pharmacist or other health-care provider.

(6) An Individual Data Collection Form (IDCF) shall be filled out for each person receiving an antiviral medication at a Treatment Center, and this IDCF shall be treated as a valid prescription and retained as follows:

(a) An IDCF initiated at a pharmacy or other licensed or registered health-care facility shall be filed and retained for three years;

(b) An IDCF initiated at a facility that is not a licensed or registered health-care facility or at a temporary or mobile pharmacy shall be sent to OSPHD at the end of the state of emergency except that where the temporary or mobile facility has been established under the authority of OAR 855-007-0100(5) all records shall be filed in accordance with OAR 855-007-0110(4).

(7) Community Partner: In this rule, a Community Partner means any entity that is authorized by OSPHD or OBOP to:

(a) Purchase and store antiviral medications prior to a pandemic event;

(b) Store antiviral medications in a Board registered facility or at a tribal site in accordance with manufacture's guidelines;

(c) Take possession of the antiviral stock and distribute to critical infrastructure and key resources when so directed by OSPHD in accordance with OSPHD protocols and procedures, subject to:

(A) All medications must be distributed within 72 hours of removal from the storage site;

(B) Medications must be stored in accordance with manufacture's guidelines;

(C) All distributions must be recorded on a Distribution Log that shall include:

- (i) The name of the person receiving the medication;
- (ii) The name, strength and quantity of the medication;
- (iii) The date and the time of the distribution.

(D) The Distribution Log shall be treated as a valid prescription and returned to OSPHD after the emergency is ended;

(3) This authority for LHDs, TCs and Community Partners to possess medications shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused medications have been completed.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented:

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

## 855-007-0090

### Emergency Pharmacy Rules

#### Refills:

(1) A pharmacist in the area covered by a declared emergency or in an area engaged in disaster assistance may dispense a refill of a prescription medication without a valid prescription provided that:

(a) In the pharmacist's professional judgment, the medication is essential to the maintenance of the patient's health or the continuation of therapy; and

(b) The pharmacist provides no more than a 30-day supply; and

(c) The pharmacist records all relevant information and indicates that it is an Emergency Prescription; and

(d) The pharmacist informs the patient or the patient's agent that the medication is being provided without a prescriber's authorization and that a prescriber authorization is required for any additional refill.

#### New and modified medication therapy:

(2) A pharmacist in the area covered by a declared emergency or in an area engaged in disaster assistance may, after consultation with any authorized prescriber, initiate or modify any medication therapy, and dispense an amount of the medication to meet the patient's health needs until that patient can be seen by a health-care practitioner, provided that:

(a) The pharmacist acts in accordance with currently accepted standards of care; and

(b) In the pharmacist's professional judgment, the medication is essential to the maintenance of the patient's health or to the continuation of therapy; and

(c) The pharmacist records all relevant information to a form and indicates that a medication therapy has been initiated or modified and that this is an Emergency Prescription; and

(d) The pharmacist informs the patient or the patient's agent at the time of dispensing that the medication is being provided in the absence of a valid patient — prescriber relationship but that a prescriber was consulted regarding the appropriateness of the medication therapy; and

(e) The pharmacist informs the patient or the patient's agent that a prescriber authorization is required for any refill.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented:

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

## 855-007-0100

### Temporary Pharmacies

(1) When these rules are in effect, the Board may issue a Temporary Pharmacy Registration to any facility or mobile facility.

(2) A facility, including a mobile pharmacy, holding a Temporary Pharmacy Registration may store and dispense drugs in accordance with the requirements of OAR 855-041 and these rules. The supervising pharmacist of a mobile pharmacy shall notify the Board of the pharmacy location within 48 hours of commencing business, and within 48 hours of any change in location.

(3) A Temporary Pharmacy Registration automatically expires when the state of emergency ends unless specifically extended by the Board.

(4) Within 30 days of the end of the declared emergency, the holder of a Temporary Pharmacy Registration shall notify the Board as to the disposition of its drug inventory and records.

(5) A temporary or mobile pharmacy that is established for the sole purpose of expediting distribution of emergency immunizations, antibiotics or antiviral medications under OAR 855-007-0080, is located adjacent to an existing pharmacy registered with the Board and is under the supervision of the PIC of the existing pharmacy, does not need to be registered as a temporary pharmacy.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented:

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

## 855-007-0110

### Emergency Recordkeeping

All records initiated during a state of emergency shall be disposed of as follows:

(1) Individual Data Collection Forms shall be transferred to OSPHD at the end of the emergency and stored for three years;

(2) Community Partner's Logs shall be transferred to OSPHD at the end of the emergency and stored for three years;

(3) Emergency Prescriptions and Individual Data Collection Forms for medications dispensed from a pharmacy that is not a Temporary or Mobile Pharmacy shall be stored at the pharmacy for three years.

(4) Emergency Prescriptions and Individual Data Collection Forms for medications dispensed from a Temporary or Mobile Pharmacy shall be stored at whichever of the following locations is most appropriate:

(a) At the parent pharmacy that provided the majority of the drugs to the Temporary or Mobile Pharmacy; or

(b) At the pharmacy that employs the supervising pharmacist of the Temporary or Mobile Pharmacy; or

(c) At the pharmacy that receives the unused drugs from the Temporary or Mobile Pharmacy at the end of the emergency.

Stat. Auth.: ORS 689.205, 433.441 & 401.065

Stats. Implemented:

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

## 855-007-0120

### Damage to a Pharmacy and Medication Integrity

(1) If a pharmacy prescription department sustains damage, whether by flood or otherwise, the entire medication inventory, including any prescriptions that are awaiting pickup, is unfit for dispensing, shall be classified as adulterated and must be destroyed.

(2) If a pharmacy loses power that affects temperature or humidity controls such that USP standards for proper storage of medications have been violated, such medications shall be classified as adulterated and may not be dispensed. Note: for those medications labeled for storage at



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“controlled room temperature,” the acceptable range of temperature is 68° to 77°F with allowances for brief deviations between 59° to 86°F.

(3) Controlled substances damaged, lost or stolen shall be documented and reported to the DEA and the Board on DEA Form 41 or DEA Form 106 as appropriate.

(4) A pharmacy that is required to temporarily close or relocate due to an emergency must report this event to the Board within 3 days.

Stat. Auth.: ORS 689.205

Stats. Implemented:

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2008.

**Adm. Order No.:** BLI 44-2008

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 12-29-08

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rules amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2008.

**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, 2006, 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, 2006, and the effective dates of the applicable special wage determination and rates amendment:

(2) Marine Rates for Public Works Contracts in Oregon (effective September 20, 2005).

(3) 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, 2006, and the determination referenced in subsection (1)(a) are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 12-2003, 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. 1-1-04; 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

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning January 1, 2009.

**Adm. Order No.:** BLI 45-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rules amend 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:

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon* subject to BOTH the state PWR and federal Davis-Bacon Act dated January 1, 2009, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert.



# ADMINISTRATIVE RULES

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 2-2008, 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

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning January 1, 2009.

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

**Filed with Sec. of State:** 1-6-2009

**Certified to be Effective:** 1-6-09

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2009.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1)(a) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated 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:

(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 December 19, 2008).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2009, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. & 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007,

f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning January 1, 2009.

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

**Filed with Sec. of State:** 1-12-2009

**Certified to be Effective:** 1-12-09

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2009.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2009, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2009, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to January 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective December 19, 2008).

(b) Amendments/Corrections to January 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 2, 2009).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2009, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-

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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

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**Rule Caption:** Prescribes minimum meal and rest period requirements for employees.

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

**Filed with Sec. of State:** 1-12-2009

**Certified to be Effective:** 1-12-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 839-020-0050

**Subject:** This rule amendment establishes minimum meal and rest periods requirements for employees and sets out exceptions to the provision of meal and rest periods.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-020-0050

### Meal and Rest Periods

(1) The purpose of this rule is to prescribe minimum meal periods and rest periods for the preservation of the health of employees.

(2)(a) Except as otherwise provided in this rule, every employer shall provide to each employee, for each work period of not less than six or more than eight hours, a meal period of not less than 30 continuous minutes during which the employee is relieved of all duties.

(b) An employer is not required to provide a meal period to an employee for a work period of less than six hours. When an employee's work period is more than eight hours, the employer shall provide the employee the number of meal periods listed in Appendix A of this rule.

(c) Timing of the meal period: If the work period is seven hours or less, the meal period is to be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period is to be taken between the third and sixth hour worked.

(3) If an employer does not provide a meal period to an employee under section (2) of this rule, the employer has the burden to show that:

(a) To do so would impose an undue hardship on the operation of the employer's business as provided in section (4), and that the employer has complied with section (5) of this rule;

(b) Industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are relieved of all duty; or

(c) The failure to provide a meal period was caused by unforeseeable equipment failures, acts of nature or other exceptional and unanticipated circumstances that only rarely and temporarily preclude the provision of a meal period required under section (2) of this rule.

(4) As used in section (3)(a) of this rule, "undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. For the purpose of determining whether providing a meal period requires significant difficulty or expense, the following factors may be considered:

(a) The employer's cost of complying with the requirement to provide a meal period under section (2) of this rule.

(b) The overall financial resources of the employer.

(c) The number of persons employed at the particular worksite and their qualifications to relieve the employee; the total number of persons employed by the employer; and the number, type and geographic separateness of the employer's worksites.

(d) The effect of providing the meal period required under section (2) of this rule on worksite operations involving: the startup or shutdown of machinery in continuous-operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of materials used on the job; and the safety and health of other employees, patients, clients or the public.

(5) When an employer does not provide a meal period to an employee under section (2) of this rule, and is able to make the required showing under section (3)(a) of this rule:

(a) The employer shall instead provide the employee adequate periods in which to rest, consume a meal, and use the restroom without deduction from the employee's pay; and

(b) The employer shall first provide to each employee a notice provided by the commissioner of the Bureau of Labor and Industries regarding rest and meal periods in the language used by the employer to communicate with the employee. The employer shall retain and keep available to the commissioner a copy of the notice for the duration of the employee's employment and for no less than six months after the termination date of the employee. Notices that comply with this subsection are available upon request from the bureau. This subsection takes effect on March 16, 2009.

(6)(a) Except as provided in subsection (b) of this section, every employer shall provide to each employee, for each segment of four hours or major part thereof worked in a work period, a rest period of not less than ten continuous minutes during which the employee is relieved of all duties, without deduction from the employee's pay.

(A) As the nature of the work allows, the employer shall provide the rest period approximately in the middle of each segment of four hours or major part thereof worked in a work period. When the employee's work period is more than eight hours, the employer shall provide the employee the number of rest periods listed in Appendix A of this rule.

(B) The employer shall provide rest periods in addition to and taken separately from the time provided for a meal period. An employer may not require or allow an employee to add the rest period to a meal period or deduct the rest period from the beginning or end of the employee's work period to reduce the overall length of the work period.

(C) An employer has the burden to show that the employer provided the rest periods required under this section.

(b) An employer is not required to provide a rest period to an employee when all of the following conditions are met:

(A) The employee is 18 years of age or older;

(B) The employee works less than five hours in any period of 16 continuous hours;

(C) The employee is working alone;

(D) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and

(E) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(7) The provisions of this rule regarding meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

(8)(a) Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

(A) The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;

(B) The employee is at least 18 years of age;

(C) The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;

(D) The employee's request to waive the employee's meal periods is in writing in the language used by the employer to communicate with the employee, on a form provided by the commissioner, and is signed and dated by both the employee and employer;

(E) The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the employee's employment and for no less than six months after the termination date of the employee;

(F) The employee is provided with a reasonable opportunity to consume food during any work period of six hours or more while continuing to work;

(G) The employee is paid for any and all meal periods during which the employee is not completely relieved of all duties;

(H) The employee is not required to work longer than eight hours without receiving a 30-minute meal period during which the employee is relieved of all duties;

(I) The employer makes and keeps available to the commissioner accurate records of hours worked by each employee that clearly indicate whether or not the employee has received meal periods; and

(J) The employer posts a notice provided by the commissioner regard-

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ing rest and meal periods in a conspicuous and accessible place where all employees can view it.

(b) Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

(c) Notwithstanding subsection (b) of this section, an employee who has requested to waive meal periods under this section may request to take a meal period without revoking the agreement to waive such periods. The request to take a meal period must be submitted in writing to the employer no less than 24 hours prior to the meal period requested.

(d) An employer may not coerce an employee into waiving a meal period.

(e) An employer will be considered to have coerced an employee into waiving the employee's meal period under the following circumstances:

(A) The employer requests or requires an employee to sign a request to waive meal periods;

(B) An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

(C) The employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or

(D) The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days.

(f) Employee waiver forms and notices regarding rest and meal periods that comply with this section are available upon request from the bureau.

(9) Minors under 18 years of age are not subject to this rule. Rest and meal period requirements for minors under 18 years of age are provided in OAR 839-021-0072.

(10) As used in this rule:

(a) "Work period" means the period between the time the employee begins work and the time the employee ends work.

(b) "Work period" includes a rest period as provided in section (6) of this rule, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties.

(c) "Work period" does not include a meal period unless the meal period is paid work time as provided in section (2) or (5) of this rule.

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96; BL 1-2002, f. & cert. ef. 1-9-02; BL 41-2007, f. 12-28-07, cert. ef. 1-1-08; BL 21-2008, f. & cert. ef. 7-8-08; BL 29-2008(Temp), f. 9-22-08, cert. ef. 9-23-08 thru 3-22-09; BL 3-2009, f. & cert. ef. 1-12-09

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## Columbia River Gorge Commission Chapter 350

**Rule Caption:** Clarifying consideration of plan amendments and urban area boundary revisions are discretionary.

**Adm. Order No.:** CRGC 1-2009(Temp)

**Filed with Sec. of State:** 1-14-2009

**Certified to be Effective:** 1-14-09 thru 5-15-09

**Notice Publication Date:**

**Rules Amended:** 350-040-0020, 350-040-0040, 350-050-0020, 350-050-0060

**Subject:** These temporary rules clarify that the Commission's consideration of applications to amend the Management Plan and revise urban area boundaries is a discretionary action, and specify that the Commission will determine, as part of its biennial work planning, how many of these type of applications it will accept for review. The Commission is concurrently proposing these or similar rules as permanent rules.

**Rules Coordinator:** Nancy A. Andring—(509) 493-3323

### 350-040-0020

#### Authority

(1) Consideration of requests to revise urban area boundaries is a discretionary action authorized by section 4(f) of the Act. The Act does not entitle a county, or any person or entity, to have the Commission review a request to revise any urban area boundary. The Commission may make "minor revisions" to the boundaries of an Urban Area (Scenic Area Act, Section 4(f)).

(2) Three procedural requirements are included in Section 4(f)(1) of the Scenic Area Act:

(a) Requests to revise an Urban Area boundary are submitted to the Commission by a county government;

(b) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and

(c) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve a revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

(3) Section 4(f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(a) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

(b) Revision of Urban Area boundaries is consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

(c) Revision of Urban Area boundaries will result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(d) Revision of Urban Area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09

### 350-040-0040

#### Processing of Application

Applications for revision of urban area boundaries shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of urban area boundary revision applications it will process during the biennium and may set its limit at zero.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09

### 350-050-0020

#### Authority

(1) Consideration of amendments to the Management Plan is a discretionary action authorized by section 6(h) of the Act. The Act does not entitle any person or entity to have the Commission review an application to amend the Management Plan. The Commission may adopt an amendment to the Management Plan only if it is consistent with the purposes and standards of the Scenic Area Act, the provisions in section 6(h) of the Act, and this rule.

(2) The Act only allows the Commission to adopt a plan amendment:

(a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and

(b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09

### 350-050-0060

#### Processing of Application

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process during the biennium and may set its limit at zero. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall maintain requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) For legislative amendments, the Executive Director shall hold a pre-application conference as provided in 350-050-0045. Following the



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pre-application conference, the Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

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

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09

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### Department of Administrative Services

#### Chapter 125

**Rule Caption:** Use of Buildings, Grounds, Parking areas (Structures, Facilities, Lots) and Premises under Department Control.

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

**Filed with Sec. of State:** 1-6-2009

**Certified to be Effective:** 1-6-09

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 125-075-0015

**Subject:** Amendment removes language in conflict with ORS 166.170 and 166.370 and adds language regarding the use of illegal substances and illegal drug activities on the grounds, parking facilities and premises of buildings under Department control.

**Rules Coordinator:** Yvonne Hanna—(503) 378-2349, ext. 325

#### 125-075-0015

**Possession or Use of Firearms, Alcoholic Beverages and Illegal Substances on the Grounds, Parking Areas (Structures, Facilities, Lots) and Premises of Buildings Under Department Control**

(1)(a) Possession or use of firearms or other weapons of any kind, including any explosives, air guns, or slingshots on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control is governed by federal and state laws.

(b) The provisions of this section do not apply to firearms in the possession of or stored for official public business authorized by statute for peace officers or for members of any state or national military organization.

(2)(a) The sale, possession and consumption of alcoholic beverages are governed by federal and state laws, local ordinances, and regulations in compliance with a permit. Visitors to any grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control must comply with any directives given to them by law enforcement authorities and employees specifically designated by the Department to investigate observed or reported violations and to issue oral or written warnings or citations to enforce Department rules.

(b) Wine is permitted when stored or used for official public business by the Department of Agriculture under ORS Chapter 576;

(c) Alcoholic beverages are permitted if stored legally in any private vehicle in transit through or while legally parked on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control.

(3)(a) It is unlawful for any person to possess illegal drugs on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control.

(b) Illegal drug activities are subject to federal and state laws; local ordinances and regulations; and State Policy 50.000.01 Drug-Free Workplace. Any person who uses, possesses, or distributes illegal drugs on the grounds, parking areas (structures, facilities, lots) and premises of buildings under Department control is subject to criminal prosecution by state and federal authorities.

Stat. Auth.: ORS 276 & 283

Stats. Implemented:

Hist.: GS 3-1983, f. & ef. 1-19-83; DAS 1-2009, f. & cert. ef. 1-6-09

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### Department of Agriculture, Oregon Fryer Commission

#### Chapter 620

**Rule Caption:** Rule to permanently eliminate the assessment to growers for the Oregon Fryer Commission.

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

**Filed with Sec. of State:** 1-15-2009

**Certified to be Effective:** 3-1-09

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

**Rules Amended:** 620-010-0020

**Rules Repealed:** 620-010-0020(T)

**Subject:** The Oregon Fryer Commission will permanently eliminate the assessment charged to Oregon growers due to a number of increases in costs to growers that have made continued operation of their business difficult. Marketing of Oregon fryers by the Commission has also become a duplication of marketing done by other companies within the state.

**Rules Coordinator:** Julie Schiele—(503) 537-6200

#### 620-010-0020

##### Assessment

Any person who is a first purchaser as defined in ORS 576, shall deduct and withhold an assessment at the rate of 0 cents per pound live-weight on all fryers grown in Oregon to become effective retroactive September 1, 2008 through February 29, 2009.

Stat. Auth.: ORS 576

Stats. Implemented:

Hist.: 1FC 1, f. 2-10-58; 1FC 3, f. 6-15-60; 1FC 6(Temp), f. & ef. 4-17-75; 1FC 7, f. 7-31-75, ef. 8-25-75; 1FC 9, f. & ef. 6-7-76; 1FC 1-1982, f. 1-7-82, ef. 1-15-82; OFC 2-2008(Temp), f. & cert. ef. 10-6-08 thru 2-28-09; OFC 1-2009, f. 1-15-09, cert. ef. 3-1-09

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### Department of Community Colleges and Workforce Development

#### Chapter 589

**Rule Caption:** Employer Workforce Training Fund.

**Adm. Order No.:** DCCWD 2-2008

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 12-29-08

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 589-020-0225

**Subject:** Executive Order #03-16 established the Employer Workforce Training Account and directed the Department of Community Colleges and Workforce Development to develop and adopt rules to implement the administration of the Account. This rule establishes the role of the Oregon Workforce Investment Board in determining funding levels for Workforce Response Team Funds, Statewide Opportunity Funds, and the Governor's Strategic Training Fund.

**Rules Coordinator:** Linda Hutchins—(503) 378-8648, ext. 474

#### 589-020-0225

##### Employer Workforce Training Fund

(1) Purpose: The Employer Workforce Training Account (EWTA) was established by Executive Order #03-16 to support the retention and growth of living wage jobs, a skilled workforce, and competitive businesses in Oregon. To administer the EWTA, the Department of Community Colleges and Workforce Development (CCWD) established the Employer Workforce Training Fund (EWTF). This workforce development strategy must ensure that public and private sector investments are leveraged for the greatest impact and that training programs are responsive to the needs of business, industry, and the workers.

(2) Definitions:

(a) Employer Workforce Training Account (EWTA): Established by Executive Order to support the Governor's economic recovery plan to ensure that a skilled workforce available to keep Oregon's industries productive and competitive.

(b) Employer Workforce Training Fund (EWTF): Includes Workforce Response Team (WRT) funds, EWTF Statewide Opportunity funds (SO) and the EWTF Governor's Strategic Training Fund (GSTF).

(3) General Provisions: Employer Workforce Training Fund (EWTF).

(a) The EWTF has three outcome goals:

(A) Create and retain living wage jobs in Oregon;

(B) Build a highly skilled workforce, especially in high-wage, high-demand industries;

(C) Enhance the global competitiveness of Oregon businesses based on the skill of their workforce.

(b) The EWTF includes Oregon's Workforce Investment Act (WIA) allocation, identified as reserve funds, under section 128(a) and 133(a) of the WIA.

(c) The OWIB Strategic Plan gives direction to the EWTF which is most advantageous economically to the state and workforce regions. The direction for EWTF funds may be updated at the direction of the OWIB and the Governor or his designee through the OWIB Strategic Plan.

(d) All employers and partner agencies participating in regional or statewide EWTF projects must meet the requirements of the CCWD Methods of Administration (MOA).

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(e) OWIB must notify CCWD annually, prior to July 1, of the funding allocation for EWTF. A minimum of 65% of the funds shall be allocated regionally for WRT purposes. The remainder will be allocated at OWIB's discretion for SO and GSTF.

(f) CCWD shall allocate and distribute EWTF in accordance with the OWIB allocation. All funds must be expended on a cost reimbursement basis.

(g) EWTF projects must comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this funding.

(h) All participants in any EWTF award decision must comply with conflict of interest requirements at 29 CFR 667.200(a)(4)(i) by neither casting a vote on, nor participating in any decision-making capacity.

(i) All EWTF projects are subject to CCWD Monitoring.

(4) EWTF Workforce Response Team (WRT) Funds

(a) The EWTF WRT funds shall be used to support the training of workers at outlined in CCWD policy 589-20.4.

(b) CCWD shall distribute the WRT funds to the Local Workforce Investments Boards for regional distribution through the local plan.

(5) EWTF Statewide Opportunity (SO) Funds:

(a) The SO funds are awarded for the purpose of solving challenges or engaging in opportunities in Oregon with regard to its workforce development needs. SO funds will be focused in opportunity areas identified by the OWIB and the Governor or his designee.

(b) OWIB will:

(A) Seek, identify, and/or select proposals based on strategic plan priorities;

(B) Establish eligibility criteria and application process for SO grants;

(C) Set performance measures and reporting for SO projects;

(D) Approve SO projects;

(E) Adopt policies as needed for SO funds.

(c) CCWD will administer the EWTF SO funds.

(6) EWTF Governor's Strategic Training Fund (GSTF):

(a) The GSTF supports the retention and growth of living wage jobs, a skilled workforce, and competitive businesses in Oregon. GSTF is a flexible, responsive, and time-sensitive resource for training Oregon's private sector workforce. The emphasis is to upgrade the skills of the workforce in order to increase productivity, keep Oregon businesses viable and competitive, and offer new skills and opportunities to Oregon's workers. The Governor or his designee, the Oregon Economic and Community Development Department (OECD), CCWD and OED will set the broad criteria for GSTF. Funding decisions shall be made by the Governor and/or his designee. Upon the Governor's approval, an approved application will be sent to CCWD to award funds.

(b) OWIB will coordinate with the Governor and/or his designee to:

(A) Establish eligibility criteria and application process for GSTF projects;

(B) Set performance measures and reporting for GSTF projects;

(C) Coordinate approval of GSTF projects decisions with the Governor and/or his designee;

(D) Adopt policies as needed for GSTF.

(c) CCWD will administer the EWTF GSTF.

Stat. Auth.: ORS 660.318

Stats. Implemented: 660.318 [2001 c.684 §11]

Hist.: DCCWD 2-2004, f. & cert. ef. 11-30-04; DCCWD 4-2006(Temp), f. & cert. ef. 6-15-06 thru 11-30-06; DCCWD 5-2006, f. & cert. ef. 9-15-06; DCCWD 1-2008(Temp), f. & cert. ef. 9-18-08 thru 3-17-09; DCCWD 2-2008, f. & cert. ef. 12-29-08

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### Department of Consumer and Business Services,

### Building Codes Division

### Chapter 918

**Rule Caption:** Outlines procedures for local municipalities requesting a local amendment to the state building code.

**Adm. Order No.:** BCD 28-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 918-020-0370

**Subject:** Under ORS 455.040, the division may approve requests from municipalities for ordinances that represent local amendments to the state building code. These rules establish a procedure for submission and approval of local municipal amendment requests.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

### 918-020-0370

#### Local Amendment Requests

(1) A local municipality may request under ORS 455.040 a local amendment relating to matters covered under the building code, by submitting to the director, in writing, a local amendment application. The application must include:

(a) The reason for the request;

(b) The name of, and contact information for, the building official responsible for submitting the request and enforcing and interpreting the local amendment if approved;

(c) A copy of the municipality's proposed local ordinance or administrative rule; and

(d) A copy of the report required by section (2)(b) of this rule.

(2) Prior to submitting a request for a local amendment under ORS 455.040, a municipality must:

(a) Provide for a public hearing or public meeting in the manner required by applicable municipal or state law; and

(b) Submit a report to the division. The report must:

(A) Summarize comments received;

(B) Outline the impacts of the local amendment; and

(C) Explain how the municipality responded to the substantive concerns and issues raised during the public input period.

(3) Local amendments shall not contain a severance clause. The content of the local amendment as interpreted and approved by the director represents the terms and conditions of the approval. Where one or more provisions are deemed invalid, the entire local amendment is invalidated.

(4) Once the local amendment request is received, the director will review the request and the municipality's proposed amendment, and either approve the proposed local amendment in whole or in part, or deny the request. The director may approve the local amendment with conditions.

(5) Once the local amendment's provisions are approved by the director they cannot be changed. If a municipality wishes to change the provisions, they must submit a new amendment request for the director's approval.

(6) The building official for the municipality requesting the local amendment will be responsible for enforcing and interpreting the amendment once it is approved.

(7) The director may, upon written request, issue a directive to the building official to ensure that the local amendment is being administered according to the terms and conditions of the approval.

(8) A local amendment may be reviewed occasionally by the director to determine if it continues to be viable.

(9) The director reserves the right to terminate approval of the local amendment based on new information, including but not limited to, changes in technology, conflicts with model codes, changes in accepted practices under the applicable model codes, and failure of the building official to uphold the terms, conditions, or any directives related to the local amendment.

Stat. Auth. ORS 455.030

Stat. Implemented: ORS 455.040

Hist.: BCD 28-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Changes the inspection frequency of certain pressure vessels.

**Adm. Order No.:** BCD 29-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 918-225-0570

**Subject:** The rule specifies the frequency of pressure vessel inspections. Inspection frequency was adjusted to improve efficiency by tailoring inspection cycles to match the safety risks posed by particular classes of pressure vessels. This rule also allows boiler and pressure vessel owners to choose to have some boilers and pressure vessels inspected more frequently (off-cycle) in order to get all boilers and pressure vessels at one facility inspected at the same time.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

### 918-225-0570

#### Boiler and Pressure Vessel Inspection Schedules

Unless the division grants special permission, all inspectors must comply with the following inspection schedule:

**NOTE:** Table 1-B, Boiler and Pressure Vessel Inspection Cycles, is available on the division's Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>.

(1) Power boilers must be inspected, at minimum:

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- (a) Internally — every year, when physical construction of the boiler allows; and
- (b) Externally — every year, while under pressure.
- (2) Cast iron boilers must be inspected externally — every two years, while under pressure.
- (3) Low pressure steam boilers must be inspected, at minimum:
- (a) Internally — every two years, when physical construction of the boiler allows; and
- (b) Externally — every two years, while under pressure.
- (4) Hot water heating and hot water supply boilers must be inspected:
- (a) Internally — every six years, when physical construction of the boiler allows; and
- (b) Externally — every two years, while under pressure.
- (5) Pressure vessels containing anhydrous ammonia intended for use as fertilizer must be inspected, at minimum, externally every three years.
- (6) Portable pressure vessels, mounted on a motorized vehicle and containing only air, not exceeding 5 cubic feet in volume and operated at gauge pressures of not more than 200 pounds per square inch must be inspected, at minimum:
- (a) Internally — every four years, subject to section (14) of this rule; and
- (b) Externally — every four years.
- (7) Fixed pressure vessels, containing only air, not located at a place of public assembly, not exceeding 20 cubic feet in volume, and operated at gauge pressures of not more than 200 pounds per square inch must be inspected, at minimum:
- (a) Internally — every six years, subject to section (14) of this rule; and
- (b) Externally — every six years.
- (8) CO<sub>2</sub> vessels and hydro-pneumatic pressure vessels, used for beverage service, not exceeding 20 cubic feet in volume, and operated at gauge pressures of not more than 300 pounds per square inch must be inspected, at minimum:
- (a) Internally — every six years, subject to section (14) of this rule; and
- (b) Externally every six years.
- (9) Pressure vessels, not classified in sections (5), (6), (7), and (8) of this rule, and subject to internal corrosion or erosion must be inspected, at minimum:
- (a) Internally — every two years, subject to section (14) of this rule; and
- (b) Externally — every two years.
- (10) Unfired pressure vessels, not classified in sections (5), (6), (7), (8), (11), and (12) of this rule, and not subject to internal corrosion must be inspected, at minimum, externally — every four years.
- (11) Unfired pressure vessels not subject to internal corrosion but containing a substance which, if it were to leak, might cause serious irreversible harm to a person must be inspected, at minimum:
- (a) Internally — every two years, subject to section (14) of this rule; and
- (b) Externally — every two years.
- (c) A substance “might cause serious irreversible harm” if the substance’s Material Safety Data Sheet describes serious health or physical risks caused by short-term exposure to the substance.
- (12) Unfired pressure vessels not subject to internal corrosion that are located at a place of public assembly and are not classified in section (8) of this rule must be inspected, at minimum:
- (a) Internally — every two years, subject to section (14) of this rule; and
- (b) Externally — every two years.
- (13) Pressure piping systems containing refrigerants, steam, or pressurized condensate: Inspection during fabrication, installation, repair, or alteration for verification of compliance with material, welding, brazing, and structural support requirements. The inspector may require other tests to verify quality of weldments. This rule does not apply to welded repair of pressure piping under OAR 918-225-0720.
- (14) The inspector may waive an internal inspection, under sections (6), (7), (8), (9), (11), or (12) of this rule if the inspector believes from alternate inspection methods an internal inspection is not necessary to verify the safe condition of the vessel.
- (15) An inspector may require additional internal or external inspections, or tests, other than those required in this rule, if the inspector has reason to believe that the boiler or pressure vessel does not meet minimum safety standards.

(16) Failure to comply with sections (1) through (15) of this rule may cause inspections to be performed by a deputy inspector per ORS 480.570(6) as directed by the chief inspector.

Stat. Auth.: ORS 480.545, 480.550 & 480.560

Stats. Implemented: ORS 480.545, 480.550 & 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 12-1980, f. & ef. 9-12-80; BCA 1-1987, f. & ef. 7-1-87; Renumbered from 814-025-0075; BCA 22-1992(Temp), f. 12-15-92, cert. ef. 1-1-93; BCA 4-1993, f. & cert. ef. 4-5-93; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0175; BCD 18-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 15-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 7-2007, f. 7-13-07, cert. ef. 9-1-07; BCD 29-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Establishes permitting and inspection procedures for electric vehicle charging stations.

**Adm. Order No.:** BCD 30-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 918-311-0065

**Rules Repealed:** 918-311-0065(T)

**Subject:** This rule establishes a permitting and inspection protocol for electric vehicle charging stations. As part of the governor’s sustainability agenda, the division is working to accommodate new advances in sustainable technology. This rule addresses emerging technology by defining permit and inspection requirements for the installation of charging stations for electric vehicles.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-311-0065

### Electric Vehicle Charging Station Statewide Permit and Inspection Protocol

To ensure a path for the emerging technology and enable the installation of charging stations for electric vehicles, the following permit and inspection protocols will apply throughout the state, notwithstanding contrary provisions contained in the **Oregon Electrical Specialty Code**.

(1) Building officials and inspectors shall permit and allow installation of an electric vehicle charging station that has a Building Codes Division’s special deputy certification label without further testing or certification.

(2) Persons installing an electric vehicle charging station must obtain a permit for a feeder from the inspecting jurisdiction. No other state building code permit is required.

(3) The jurisdiction may perform up to two (2) inspections under the permit issued in subsection (2) above.

(4) Inspection of the installation is limited to examining the feeder for compliance with the following **Oregon Electrical Specialty Code** provisions:

(a) Overcurrent protection, per articles 225 and 240;

(b) Physical protection of conductors, per article 300;

(c) Separation and sizing of the grounding and neutral conductors, per article 250.20; and

(d) Provisions for locking out the breaker for maintenance, per chapter 4.

(5) For the purpose of this rule, the service, feeder, and charging station pedestal will be considered a single structure as defined by the **Oregon Electrical Specialty Code**. The structure’s owner may opt to install a grounding electrode system to supplement lightning protection, but cannot be required to do so.

Stat. Auth.: ORS 455.065

Stat. Implemented: ORS 455.065

Hist.: BCD 16-2008(Temp), f. & cert. ef. 9-26-08 thru 3-25-09; BCD 30-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Allows boiler program to use alternate method process and revises boiler data report rule.

**Adm. Order No.:** BCD 31-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 918-008-0075, 918-008-0080, 918-008-0085, 918-008-0090, 918-008-0095, 918-008-0110, 918-008-0115, 918-225-0450

**Subject:** These rules allow the division to issue alternate method rulings for the boiler and pressure vessel program, allowing contractors to use new technologies. The rules also require that any boiler or



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pressure vessel not built to ASME or Canadian Standards Association standards have manufacturer's construction data, written in English, on file with the division prior to installation.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-008-0075

### Scope and Purpose

(1) OAR 918-008-0075 to 918-008-0115 applies to the state building code adopted by the division as defined in ORS 455.010. The purpose of these rules is to create a standard process for statewide code interpretations, site-specific interpretations, and alternate method rulings for all specialty code programs.

(2) Statewide code interpretations and site-specific interpretations clarify existing provisions of the state building code and are not intended to create new provisions.

(3) Alternate method rulings on products not covered in the current state building code apply only to new products, materials, or methods, and do not create new sections of code.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144

Stats. Implemented: ORS 455.060, 455.100 & 455.110

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-008-0080

### Definitions

(1) "Alternate Method Ruling" is a request to rule on the acceptability of new materials, designs, or innovative methods of construction not covered by the state building code.

(2) "Petitioner" means:

(a) Any person residing, currently doing business, wishing to do business, or owning property in the State of Oregon; or

(b) A building official authorized to administer and enforce the state building code under ORS 455.148 or 455.150.

(3) "Site-Specific Interpretation" means a division-issued interpretation of a specialty code provision for use by a municipality that applies only to a single project. Site-specific code interpretations assist a local jurisdiction by providing an explanation of the meaning or intent of specific code provisions or sections as they apply to work permitted by the local jurisdiction. Nothing in this section replaces local processes for site-specific interpretations.

(4) "Statewide Code Interpretation" means a division-issued binding interpretation of a specialty code provision that applies in all jurisdictions. Statewide code interpretations provide an explanation of the meaning or intent of specific code provisions or sections.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144

Stats. Implemented: ORS 455.060, 455.100 & 455.110

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-008-0085

### Statewide Code Interpretation Process

(1) A petitioner may request a statewide code interpretation by providing the following information in writing or on division approved forms:

(a) A brief description of the facts and circumstances giving rise to the need for a statewide code interpretation; and

(b) The specialty code section at issue.

(2) Notwithstanding subsections (1)(a) and (b) of this rule, the division may elect to accept a substantially complete request for a statewide code interpretation if circumstances merit.

(3) After receipt and approval of a petitioner's request for interpretation, the division will process the request, reach a conclusion, and distribute the decision.

(4) Each quarter, the division will communicate to the appropriate advisory board its actions concerning statewide code interpretations.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144

Stats. Implemented: ORS 455.060, 455.100 & 455.110

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-008-0090

### Site-Specific Interpretation Process

(1) A building official may request a site-specific interpretation by providing the following information in writing or on division approved forms:

(a) A brief description of the facts and circumstances giving rise to the need for a site-specific interpretation;

(b) The specialty code section at issue; and

(c) The physical address of the building site.

(2) Notwithstanding subsection (1)(a) through (c) of this rule, the division may elect to accept a substantially complete request for a site-specific interpretation if circumstances merit.

(3) After receipt and approval of a building official's request for interpretation, the division will process the request, reach a conclusion, and distribute the decision.

Stat. Auth.: ORS 455.100, 455.110 & 455.144

Stats. Implemented: ORS 455.100 & 455.110

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-008-0095

### Alternate Method Ruling Process

(1) A petitioner may request an alternate method ruling by providing the following information in writing or on division approved forms:

(a) Information on the material, design, or method the person wishes to utilize;

(b) The specialty code section at issue; and

(c) A brief description of the technical and scientific facts and circumstances giving rise to the need for an alternate method ruling.

(2) Notwithstanding subsections (1)(a) through (c) of this rule, the division may elect to accept a substantially complete request for an alternate method ruling if circumstances merit.

(3) After receipt of a petitioner's complete request for interpretation, the appropriate advisory board makes a recommendation on the technical and scientific facts of the proposed alternate method ruling, consistent with ORS 455.060.

(4) After considering the recommendation of the appropriate advisory board, the division makes the final decision on the alternate method ruling and distributes the decision consistent with ORS 455.060.

Stat. Auth.: 455.060 & 455.144

Stats. Implemented: 455.060

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-008-0110

### Enforcement

All jurisdictions administering and enforcing the state building code must enforce statewide code interpretations and allow the use of alternate method rulings consistent with the original scope of the ruling. Failure to enforce statewide code interpretations or allow statewide alternate method rulings may subject building officials, plans examiners, and inspectors to revocation or suspension of certifications.

Stat. Auth.: ORS 455.144, 455.148, 455.150 & 455.740

Stats. Implemented: ORS 455.148, 455.150 & 455.740

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-008-0115

### Reconsideration of Division Determination

In accordance with OAR 137-003-0090, 137-004-0080, and ORS 183.484(2):

(1) A petitioner whose request for a site-specific interpretation or a statewide code interpretation was denied may request reconsideration of the agency decision.

(2) Any person, including a member of an advisory board as defined under ORS 455.010, adversely affected or aggrieved by an interpretation may request the division reconsider its determination.

(3) Interpretations or rulings remain in effect despite a reconsideration request unless a petitioner specifically requests and is granted a stay of enforcement of the interpretation.

Stat. Auth.: ORS 455.100, 455.110 & 455.144

Stats. Implemented: ORS 455.100, 455.110

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-225-0450

### Manufacturer's Data Reports

(1) For new boilers or pressure vessels built to ASME or Canadian Standards Association standards, a Manufacturer's Data Report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors before installing any new boiler or pressure vessel subject to installation inspection in Oregon. A copy of the filing is provided to the chief inspector by the National Board of Boiler and Pressure Vessel Inspectors when the boiler is to be installed in Oregon.

(2) For new boilers or pressure vessels not built to ASME or Canadian Standards Association standards, that are approved for installation in Oregon through administrative rule or an alternate method ruling, shall require manufacturer's construction specifications that are comparable to a

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Manufacturer's Data Report and that are written in English, to be filed with the division before installation.

(3) A Manufacturer's Data Report shall be filed with the chief inspector before installing any new unfired miniature pressure vessel or used boiler or pressure vessel subject to installation inspection in Oregon.

(4) This rule does not apply to cast iron boilers.

Stat. Auth.: ORS 480.545

Stats. Implemented: ORS 480.545

Hist.: DC 19, f. 6-21-73, ef. 7-1-73; DC 2-1982, f. & ef. 2-3-82; DC 21-1984, f. & ef. 5-15-84; DC 32-1984, f. & ef. 10-19-84; Renumbered from 814-025-0008; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0020; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 31-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Allows boilers and pressure vessels constructed to certain international standards to be installed in Oregon.

**Adm. Order No.:** BCD 32-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Adopted:** 918-225-0445

**Subject:** The rules allow for Oregon installation of boilers and pressure vessels constructed to the standards of the following international organizations: British Standards Institute; Canadian Standards Association; European Committee for Standardization; or Syndicat National de la Chaudronnerie de la Tuyauterie & de la Maintenance Industrielle (SNCT).

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-225-0445

### Other Installation Standards

(1) Boilers or pressure vessels not designed or constructed in accordance with the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME) may be installed in Oregon if the boiler or pressure vessel was designed or constructed in accordance with the applicable standards issued by one of the following organizations:

(a) British Standards Institute;

(b) Canadian Standards Association;

(c) European Committee for Standardization; or

(d) Syndicat National de la Chaudronnerie de la Tuyauterie & de la Maintenance Industrielle (SNCT).

(2) Boilers and pressure vessels constructed in accordance with the standards listed in (1)(a) through (d) of this rule must:

(a) Have controls and safety devices that are comparable to the controls and safety devices outlined in ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, including, but not limited to, data plates and warning labels that are written in English;

(b) Be fitted with pressure relief valves that are built to ASME standards; and,

(c) Be installed, operated, maintained, and repaired in accordance with the provisions of ORS 480.510 to 480.670 and these rules.

Stat. Auth.: ORS 480.545 & 480.560

Stats. Implemented: ORS 480.545 & 480.560

Hist.: BCD 32-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Adopts the 2008 Oregon Boiler and Pressure Vessel Specialty Code.

**Adm. Order No.:** BCD 33-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 918-225-0430, 918-225-0435

**Subject:** These rules adopt minimum safety standards for the safe installation and operation of boilers and pressure vessels in Oregon by adopting provisions of national boiler and pressure vessel model codes and standards. The rules adopt the model codes and standards with additional Oregon amendments that will be referred to as the 2008 Oregon Boiler and Pressure Vessel Specialty Code.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-225-0430

### Adopted Oregon Boiler and Pressure Vessel Specialty Code

(1) The **Oregon Boiler and Pressure Vessel Specialty Code** containing the minimum safety standards for boilers, pressure vessels, pressure

pipings, nuclear components, parts, items, and repair and alteration procedures follow:

(a) ORS 480.510 to 480.670 and OAR chapter 918, division 225;

(b) The **Boiler and Pressure Vessel Code of The American Society of Mechanical Engineers (ASME), 2007 Edition** as published, including Section I; Section II, Parts A, B, C, and D; Section IV; Section V; Section VI; Section VII; Section VIII, Division 1, 2, and 3; Section IX; and, Section X;

(c) The **2007 Edition of the ANSI/ASME B31.1 Power Piping Code**;

(d) The **2006 Edition of the ANSI/ASME B31.3 Process Piping Code**;

(e) The **2006 Edition of the ANSI/ASME B31.5 Refrigeration Piping Code**;

(f) The **2004 Edition of the ANSI/ASME B31.9 Building Service Piping Code**;

(g) The **2007 Edition of the National Board Inspection Code ANSI/NB 23**, including Parts 1, 2, and 3, with Oregon amendments;

(h) The **2007 Edition of NFPA 85, Boiler and Combustion Systems Hazards Code**; and,

(i) The **2006 Edition of ASME, CSD-1, Controls and Safety Devices for Automatically Fired Boilers**.

(2) Notwithstanding any licensing or certification provisions contained in the model codes adopted in subsection (1) of this section for inclusion in the **Oregon Boiler and Pressure Vessel Specialty Code**, the standards and requirements applicable to boiler and pressure vessel business and trade licenses, as well as inspector certifications, issued by the Building Codes Division are established in ORS chapters 455 and 480, and OAR chapter 918, divisions 30, 90, and 225.

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

Stat. Auth.: ORS 455.020, 480.545 & 480.550

Stats. Implemented: ORS 480.545, 480.550 & 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 27(Temp), f. & ef. 12-31-73; DC 33, f. 5-6-74, ef. 5-25-74; DC 38(Temp), f. & ef. 11-1-74; DC 50, f. 7-2-75, ef. 7-25-75; DC 89, f. & ef. 6-2-77; DC 93, f. & ef. 7-19-76; DC 1-1978, f. 1-5-78, ef. 1-15-78; DC 4-1980, f. & ef. 5-30-80; DC 6-1982, f. & ef. 2-4-82; DC 23-1982, f. & ef. 11-9-82; DC 18-1983, f. & ef. 8-11-1983; DC 21-1983, f. & ef. 9-29-83; DC 1-1984, f. & ef. 1-5-84; DC 18-1984, f. & ef. 5-9-84; DC 36-1984, f. & ef. 12-4-84; DC 16-1985, f. & ef. 7-1-85; DC 6-1986, f. & ef. 5-5-86; DC 2-1987, f. & ef. 2-18-87; BCA 5-1987, f. & ef. 8-24-87; BCA 15-1988, f. & cert. ef. 11-16-88; BCA 25-1989, f. & cert. ef. 7-27-89; Renumbered from 814-025-0006; BCA 5-1990, f. & cert. ef. 2-6-90; BCA 26-1990, f. & cert. ef. 10-30-90; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0015; BCD 17-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 20-2005, f. 9-15-05, cert. ef. 10-1-05; BCD 16-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 33-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-225-0435

### Amendments to the Oregon Boiler and Pressure Vessel Specialty Code

(1) The **Oregon Boiler and Pressure Vessel Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Boiler and Pressure Vessel Specialty Code** are placed in this rule.

(2) Effective January 1, 2009, the **2007 Edition of the National Board Inspection Code ANSI/NB 23, part 1** is amended in Oregon as provided in Table 2-B.

**NOTE:** Table 2-B is available on the division's Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>.

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

Stat. Auth.: ORS 455.020, 480.545 & 480.550

Stats. Implemented: ORS 480.545 & 480.550

Hist.: BCD 16-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2007, f. 6-8-07, cert. ef. 6-15-07; BCD 33-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Adopts the 2008 Oregon Elevator Specialty Code.

**Adm. Order No.:** BCD 34-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 918-400-0455, 918-400-0458

**Subject:** This rule adopts the *2008 Oregon Elevator Specialty Code*, which is comprised of the following national model codes: the *Safety Code for Elevators and Escalators*, ASME A17.1-2007; the *Guide for Inspection of Elevators, Escalators and Moving Walks*, ASME A17.2-2007; the *Safety Standard for Platform Lifts and Stairway Chairlifts*, ASME A18.1-2005; and the *Safety Standard for Belt Manlifts*, ASME A90.1-2003. The *2008 Oregon Elevator Specialty Code* also includes Oregon-specific amendments to the *Safety Code for*

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*Elevators and Escalators*, ASME A17.1-2007, as well as the 2005 edition of the *Oregon Specialty Lift Code*.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-400-0455

### Adopted Oregon Elevator Specialty Code

(1) Effective January 1, 2009, the 2008 Oregon Elevator Specialty Code is comprised of:

(a) The Oregon Specialty Lift Code, 2005 edition; and

(b) Four national model codes published by the American Society of Mechanical Engineers, as amended by the Building Codes Division in OAR 918-400-0458, which are the:

(A) Safety Code for Elevators and Escalators, ASME A17.1-2007;

(B) Guide for Inspection of Elevators, Escalators and Moving Walks, ASME A17.2-2007;

(C) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-2005; and

(D) Safety Standard for Belt Manlifts, ASME A90.1-2003.

(2)(a) Referenced standards referred to within adopted national model codes shall recognize the latest Oregon adopted edition unless otherwise specified in this rule.

(b) Notwithstanding any licensing or certification provisions contained in the model codes adopted in subsection (1) of this section for inclusion in the **Oregon Elevator Specialty Code**, the standards and requirements applicable to elevator business and trade licenses, as well as inspector certifications, issued by the Building Codes Division are established in ORS Chapters 455, 460, and 479, and OAR chapter 918, divisions 30, 90, and 282.

[Publications: Publications referenced are available for review at the agency.]

Stat. Auth.: ORS 455.030 & 460.085

Stats. Implemented: ORS 455.030 & 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; DC 12-1986(Temp), f. & ef. 7-8-86; DC 10-1987, f. & ef. 4-13-87; Renumbered from 814-030-0005; BCA 35-1989, f. 12-22-89, cert. ef. 1-1-90; BCA 7-1992, f. & cert. ef. 4-10-92; BCA 26-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 13-1993(Temp), f. 6-23-93, cert. ef. 7-1-93; BCA 17-1993, f. 8-24-93, cert. ef. 9-1-93; BCA 24-1993, f. 10-22-93, cert. ef. 11-1-93; BCA 35-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 21-1994, f. 9-13-94, cert. ef. 9-15-94; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0010; BCD 3-1997, f. 3-18-97, cert. ef. 4-1-97; BCD 20-1997, f. 12-24-97, cert. ef. 1-1-98; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0520; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 17-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 34-2008, f. 12-31-08, cert. ef. 1-1-09

## 918-400-0458

### Amendments to the Oregon Elevator Specialty Code

(1) The **2008 Oregon Elevator Specialty Code**, adopted at OAR 918-400-0455, is amended pursuant to OAR chapter 918, division 8. Amendments to the **2008 Oregon Elevator Specialty Code** are provided in this rule, along with the title of the amended code and a descriptive caption of the amendment.

(2) Effective January 1, 2009, the Safety Code for Elevators and Escalators, ASME A17.1-2007, is amended by the adoption of Oregon specific amendments. The Oregon specific amendments are published in their entirety at Table 2-L.

**NOTE:** Table 2-L is available on the division's Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>

[Publications: Publications referenced are available for review at the agency.]

Stat. Auth.: ORS 455.030 & 460.085

Stats. Implemented: ORS 455.030 & 460.085

Hist.: BCD 17-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 34-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Provides an exemption from engineering requirements for design of fire protection systems.

**Adm. Order No.:** BCD 35-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 12-1-2008

**Rules Adopted:** 918-261-0015

**Rules Repealed:** 918-261-0015(T)

**Subject:** This rule provides an exemption allowing general supervising electrician, general journeyman electrician, and class "A" limited energy technician licensees to design, plan, and lay out the electrical portions of a fire protection system if employed by a licensed electrical contractor and acting as the contractor's signing supervisor. The rule allows the employing contractor to provide another contractor with designs and parts if the other contractor is installing all or part of the electrical portion of a fire protection system.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-261-0015

### Exemption from Engineering Requirements for Design of Fire Protection Systems

(1) As used in this rule:

(a) "Fire protection system" has the meaning given that term in OAR 918-305-0110.

(b) "Customer" means a person who purchases the design and the service of having the electrical portion of a fire protection system installed.

(2) A general supervising electrician, general journeyman electrician, or class "A" limited energy technician licensee who is employed by a licensed electrical contractor and acting both within the scope of the licensee's license and as a signing supervisor:

(a) May design, plan, and lay out the electrical portion of a fire protection system for the licensed electrical contractor's customers and for an electrical contractor who purchases the design and the parts or equipment for the electrical portion of a fire protection system and installs all or part of the system.

(b) Is not subject to any requirements for an additional license, permit, certificate, or registration when designing, planning, or laying out the electrical portions of a fire protection system as authorized by this rule.

(3) The electrical design documents for a fire protection system that are prepared by a general supervising electrician, general journeyman electrician, or class "A" limited energy technician licensee under subsection (2) of this rule are exempt from ORS 671.025 and do not require the stamp of an Oregon registered architect or professional engineer.

(4) For the purposes of ORS 479.860(2), and the exemption created in subsection (2) of this rule, the electrical portion of any fire protection system is considered a noncomplex electrical installation.

Stat. Auth.: ORS 479.860

Stats. Implemented: ORS 479.860

Hist.: BCD 14-2008(Temp), f. & cert. ef. 7-25-08 thru 1-21-09; BCD 35-2008, f. 12-31-08, cert. ef. 1-1-09

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**Rule Caption:** Establishes a window label program for low volume window and exempt window related product manufacturers.

**Adm. Order No.:** BCD 36-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 12-1-2008

**Rules Adopted:** 918-480-0150

**Rules Repealed:** 918-480-0150(T)

**Subject:** The rule makes changes to the labeling program for certain windows and related window products as required by the 2008 Oregon Residential Specialty Code. Manufacturers who must participate in the labeling program are identified. Requirements of the labeling program are established.

**Rules Coordinator:** Shauna Parker—(503) 373-7438

## 918-480-0150

### Low Volume Window Label Program

(1) As used in this rule:

(a) "Exempt fenestration product" means a skylight or solarium that is exempt from the thermal performance standards established in the **Oregon Residential Specialty Code**.

(b) "Manufacturer" has the definition provided in Section NF1110.1 of the **Oregon Residential Specialty Code**.

(c) "Window produced in low volume" has the definition provided in Section NF1110.1 of the **Oregon Residential Specialty Code**.

(2) Manufacturers of windows produced in low volume or exempt fenestration products must participate in a labeling program administered by the division. Participating manufacturers shall:

(a) Print their own labels, subject to standards established in the **Oregon Residential Specialty Code**;

(b) Attach an appropriate label to each window produced in low volume or exempt fenestration product produced for installation in Oregon;

(c) Comply with any other applicable labeling requirements established in Section NF1113 of the **Oregon Residential Specialty Code**; and

(d) Maintain a log in which the attachment of each label is recorded.

(3) A manufacturer participating in the division's labeling program must obtain, from the division, a log for recording the attachment of labels to either windows produced in low volume or exempt fenestration products. A participating manufacturer shall record in its log the type of window produced in low volume or exempt fenestration product that was labeled, the label's production number, and the date the label was attached. A copy of a manufacturer's labeling program log for the previous year shall be sent to



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the division by no later than January 31st of each year. The log shall also be made available to the division upon request.

(4) Participating manufacturers may not:

(a) Sell, exchange, or transfer their labels to another manufacturer;

(b) Purchase or obtain labels produced by another manufacturer; or

(c) Produce or use labels in excess of the maximum established by

Section NF1113 of the **Oregon Residential Specialty Code**.

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

Stat. Auth.: ORS 455.525

Stat. Implemented: ORS 455.525

Hist.: BCD 26-2008(Temp), f. & cert. ef. 11-3-08 thru 5-1-09; BCD 36-2008, f. 12-31-08, cert. ef. 1-1-09

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### Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Uniform Workers' Compensation Unit Statistical Plan.

**Adm. Order No.:** ID 20-2008

**Filed with Sec. of State:** 12-30-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 836-042-0045

**Subject:** The National Council on Compensation Insurance (NCCI), the rating organization for workers' compensation insurance in Oregon, has issued a new edition of the Statistical Plan for Workers' Compensation and Employers Liability Insurance (Statistical Plan). The Statistical Plan is the governing compilation of workers' compensation and employers liability insurance statistics. This publication is adopted by reference in OAR 836-042-0045. The Insurance Division must now amend OAR 836-042-0045 to adopt by reference the new edition in order to recognize and apply the NCCI plan revisions. The new edition reformats the existing plan, clarifies existing rules, reorganizes loss and expense information, updated code values, and includes rule changes.

**Rules Coordinator:** Sue Munson—(503) 947-7272

#### 836-042-0045

##### Uniform Workers' Compensation Statistical Plan

The Statistical Plan for Workers Compensation and Employers Liability Insurance, Edition of September 1, 2008, filed by the National Council on Compensation Insurance and approved by the Director to become effective January 1, 2009 is prescribed as the statistical plan for workers' compensation and employers liability insurance.

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

Stat. Auth.: ORS 731.244 & 737.225

Stats. Implemented: ORS 737.225

Hist.: IC 3-1982, f. 1-27-82, ef. 7-1-82; IC 10-1982, f. 6-23-82, ef. 7-1-82; IC 2-1983, f. 3-16-83, ef. 4-1-83; IC 5-1983, f. 6-30-83, ef. 7-1-83; IC 4-1984, f. 9-28-84, ef. 10-1-84; ID 2-1998, f. & cert. ef. 2-6-98; ID 15-2001, f. 12-19-01, cert. ef. 1-1-02; ID 7-2003, f. 12-3-03, cert. ef. 1-1-04; ID 5-2005, f. & cert. ef. 4-7-05; ID 10-2006, f. & cert. ef. 6-9-06; ID 3-2008, f. & cert. ef. 4-7-08; ID 13-2008(Temp), f. 8-14-08, cert. ef. 9-1-08 thru 1-1-09; ID 20-2008, f. 12-30-08, cert. ef. 1-1-09

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

**Rule Caption:** Adopt changes to the Portable Fire Extinguishers standard.

**Adm. Order No.:** OSHA 10-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 12-31-08

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 437-002-0187

**Subject:** Oregon OSHA is changing the rules on portable fire extinguishers because of issues discovered when the Office of State Fire Marshal (OSFM) adopted the latest version of National Fire Protection Association (NFPA) 10, Standard for Portable Fire Extinguishers.

We are also using this rule making opportunity to correct some minor issues not related to the NFPA.

We added one definition and clarified another to aid in understanding the rule. Several changes are purely grammatical for clarity.

The major change removes language about using people or companies certified by the OSFM to do maintenance on extinguishers. New language reads that these people or companies must be acceptable to local fire authorities. We also clarified the difference between "maintenance" and "internal examination" of fire extinguishers.

Please visit our website: [www.oro-sha.org](http://www.oro-sha.org). Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted and final rules.

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

#### 437-002-0187

##### Portable Fire Extinguishers.

This rule applies to portable fire extinguishers not in vehicles or vessels.

(NOTE: The Oregon Office of State Fire Marshal and your local fire marshal also have rules that apply to portable fire extinguishers.)

##### YOUR RESPONSIBILITY:

To assure that you provide functional extinguishers and your employees know when and how to use them safely.

If another Oregon rule requires you to provide fire extinguishers, the following exemptions do not apply to you.

##### EXEMPTIONS:

You are exempt from these rules if:

Your portable fire extinguishers are not accessible to employees.

##### AND

You have a written fire safety policy that requires the immediate and total evacuation of employees in the event of fire.

(NOTE: This fire safety policy is not the same as your emergency action plan and fire prevention plan.)

##### AND

You have an emergency action plan and fire prevention plan that conform to OAR 437-002-0042 and 437-002-0043.

##### PARTIAL EXEMPTION:

If extinguishers are present and accessible, but you do not intend employees to use them, AND you have an emergency action plan and fire prevention plan that meet OAR 437-002-0042 and 437-002-0043, then only paragraphs 1, 2, and 3 apply.

See Non-mandatory Appendix A — Summary of exemptions and rule requirements for 437-002-0187. [Appendix not included. See ED. NOTE.]

##### Definitions

Accessible — capable of being reached without hindrance.

Inspection — A quick check that the extinguisher has not been activated and has no damage or condition that would make it ineffective. This includes a check of the gauge or pressure indicator, if there is one.

Maintenance — A thorough examination for damage or conditions that would make internal examination or hydrostatic testing necessary more frequently than in Table 2 or 3. [Table not included. See ED. NOTE.]

(1) If you provide extinguishers

You must:

Never provide or allow the use of extinguishers with dangerous or banned agents like carbon tetrachloride or chlorobromomethane.

Never provide or allow the use of soda-acid foam, loaded stream, anti-freeze and water (inverting type) extinguishers. (See the latest NFPA 10 for a complete list of obsolete or banned extinguishers.)

**EXEMPTION:** You are exempt from the maximum travel distance requirements in Table 1 of this rule if you have an emergency action plan that complies with OAR 437-002-0042, designating which employees are authorized to use the available fire extinguishers and requiring all other employees to evacuate.

Provide and place the correct type and size fire extinguisher according to Table 1. This only applies to extinguishers for use inside buildings.

Table 1 [Table not included. See ED. NOTE.]

Mount extinguishers in a manner appropriate for their type and location. Not allow extinguishers to sit on the floor, shelves or furniture.

Use appropriate signs or other unique markings to identify extinguisher locations.

Never block access to extinguishers.

(2) Inspection and maintenance

You must:

Visually inspect each extinguisher monthly.

Be sure the extinguishers have a full charge and no defects that prevent effective use.

Remove and replace any extinguisher that is not fully operable.

Complete annual maintenance on each extinguisher using only persons or companies acceptable to your local fire authorities.

Keep a record of the annual maintenance until replaced by a new record. The record must be available to OR-OSHA on request.

Provide replacement extinguishers or some method of coverage for the effected area while extinguishers are out of service for the maintenance check.

Do internal examinations at intervals not longer than the requirements set in Table 2, using only persons or companies acceptable to local fire authorities.

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Nonrechargeable extinguishers are good for 12 years from the date of manufacture and then must be taken out of service.

Table 2 [Table not included. See ED. NOTE.]

**NOTE:** Nonrechargeable extinguishers do not require internal examinations or hydrostatic testing.

## (3) Hydrostatic testing

You must:

Assure a hydrostatic test of each extinguisher at intervals in Table 3 or when the extinguisher shows corrosion or physical damage.

Use only persons or companies acceptable to local fire authorities to do hydrostatic testing.

Empty and do applicable maintenance every six years on stored pressure extinguishers that require a 12-year hydrostatic test. This six-year requirement begins again after recharging or hydrostatic testing.

Table 3 [Table not included. See ED. NOTE.]

Keep a record of the hydrostatic test until it is replaced by a new record or the extinguisher is no longer in use. The record must have at least the date of test, test pressure, serial number of the extinguisher (or other unique identifier), and the person or company doing the test.

## (4) Employee training

You must:

Train employees in the safe use of extinguishers and standpipe hoses when you require or allow their use. Training must be at first hiring and then annually and must include:

The general methods and tactics of using an extinguisher.

The hazards of using an extinguisher on early stage fires.

Hazards associated with using standpipe hoses.

[ED. NOTE: Tables & Appendices referenced are available from the agency.]

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

Stat. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 7-2007, f. & cert. ef. 11-8-07; OSHA 10-2008, f. & cert. ef. 12-31-08

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## Department of Corrections Chapter 291

**Rule Caption:** Release of Public Information.

**Adm. Order No.:** DOC 29-2008(Temp)

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 12-16-08 thru 6-12-09

**Notice Publication Date:**

**Rules Amended:** 291-039-0010, 291-039-0015

**Subject:** These temporary rule amendments are necessary to protect the confidentiality and integrity of DOC information and make clear to employees their obligation to protect and keep secure the Department's information assets when releasing public information regarding DOC inmates and offenders.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-039-0010

#### Definitions

(1) Correction Information Systems (CIS): A computer system that has information about inmates in prison and offenders on probation, parole and post-prison supervision.

(2) Communications Manager: The employee who is designated by the Director of the Department of Corrections to coordinate media relations and public inquiries concerning policy.

(3) Criminal Justice Agency: An agency as defined in ORS 181.010(8).

(4) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(5) Director: The Director of the Department of Corrections.

(6) Employee: Any person employed full time, part time, or under temporary appointment by the Department of Corrections; any person employed under contractual arrangement to provide services to the Department; any person employed by private or public sector agencies who is serving under Department sanctioned special assignment to provide services or support to Department programs.

(7) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of program operations.

(8) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, assistant director, or administrator and has responsibility for the delivery of services or coordination of program operations.

(9) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post prison supervision, or probation status.

(10) News Release: An official statement or announcement relating to the Department of Corrections intended for distribution to the news media.

(11) Offender: Any person under the supervision of local Community Corrections who is on parole, post prison supervision, or probation status.

(12) Public Information: All Department of Corrections information that is not exempt from disclosure by statute.

(13) Public Information Officer(s): One or more employees within a functional unit who coordinate the release of information for that unit consistent with Department policy and all laws governing release of public information and disclosure of public records.

(14) Offender Public Information Screen: The screen accessed through CIS which details the following information about an inmate or offender:

(a) Name and State Identification number (SID) of inmate/offender;

(b) Date of birth;

(c) Sentence(s) and beginning dates of sentences (past and present);

(d) Offense(s) (past and present);

(e) County of commitment (past and present);

(f) Institution admission date or field admission date;

(g) Location of incarceration or supervision;

(h) Earliest release date;

(i) Discharge date (past and present); and

(j) Physical description;

(k) Name of institution counselor or Community Corrections parole or probation officer.

(15) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities and programs of the Department. Volunteers serve at the pleasure of the Department and are not considered employees.

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

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

Hist.: CD 12-1979, f. & ef. 5-17-79; CD 2-1983, f. & ef. 1-4-83; CD 45-1985, f. & ef. 8-16-85; CD 52-1986, f. & ef. 11-20-86; CD 25-1990, f. & cert. ef. 12-4-90; CD 15-1993, f. 6-7-93, cert. ef. 6-25-93; CD 1-1998, f. 1-23-98, cert. ef. 2-1-98; DOC 29-2008(Temp), f. & cert. ef. 12-16-08 thru 6-12-09

### 291-039-0015

#### Request for Release of Information

(1) Any person, including the news media, may request information about Department programs, services, facilities, employees, volunteers, inmates, and offenders.

(2) Each functional unit manager, in consultation with the Communications Manager, will designate one or more employees to serve as the public information officer(s). The functional unit manager may perform this function if he/she desires.

(3) Upon request, information listed on the Offender Public Information screen regarding inmates and offenders may be released by the designated staff at Department facilities. Staff shall act in their official capacity only when releasing this information.

(4) Inmate/offender photographs may be released when the release will enlist public assistance in apprehending fugitives from justice and/or the release will not interfere with other law enforcement efforts. Employees, contractors, and authorized volunteers have a responsibility to volunteer such inmate/offender related information to an inmate's/offender's employer and other law enforcement agencies when, in their professional judgment, the public's right to know outweighs the individual's right to privacy, because public safety may be in jeopardy based on an analysis of the inmate's/offender's actions or criminal history.

(5) Request for other than the routine information listed above will be referred to the unit's public information officer.

(6) If the information request involves questions of Department policy, major issues or news developments, the unit's public information officer will direct such requests to the Director or the Communications Manager.

(7) If death or serious injury has occurred, the names of inmate(s), offender(s), or victim(s) will not be released until the next of kin have been notified and, where applicable, the cause of death will not be released until the death certificate has been signed.

(8) Inmate/offender presentence reports are not public records. The presentence report, or any reports based on the contents of that report, may be made available to the victim by Department of Corrections employees in accordance with the provisions in ORS 137.077.

(9) Request for information concerning a current or former contractor(s) will be referred to the Department of Corrections Purchasing Unit for response.

(10) Request for information concerning a current or former employee(s) or volunteer(s) will be referred to the Department's Human Resource Section for response. Employment reference checks concerning a current or

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former employee(s) or volunteer(s) will be referred to the supervisor of the current or former employee(s) or volunteer(s) for response.

(11) Request for release of records and copies of such records will be handled in accordance with the Department's rule on Release of Public Records (OAR 291.037).

(12) No Department employee will issue an official Department of Corrections press release, schedule an official press conference, or hold an official media event without prior approval from the Director or the Communications Manager.

(13) Employees shall not, without written authorization from the Director or the Communications Manager, make written or oral statements, in what he/she gives others reasonable grounds to believe to be an official capacity, where the effect of such statements would be to impair or diminish the security, supervision, discipline, or the orderly and effective operation of any Department facility or program.

(14) Employees desiring to provide DOC public information as defined in these rules that they wish to make public through the news media must notify the functional unit's public information officer or the Communications Manager before contacting news media representative(s).

(15) Employees who are not authorized to make public statements as official Department representatives are not restricted in their access to the news media, but must clearly specify in contacting the media that they are not official Department representatives and are speaking solely on their own behalf rather than on behalf of the Department.

(16) Community Corrections:

(a) Community corrections employees in counties have access to the statewide Corrections Information System. Information listed on the Public Information screen regarding inmates and offenders may be released. Staff shall act in their official capacity only when releasing this information.

(b) If, in the interest of public safety, information other than that listed should be released to an employer or law enforcement agency, then that release of information must be documented in the case file. Documentation must include the information released, the person or agency who received the information, and the public safety reason for the release.

(c) If a county employee wishes to release inmate or offender information other than routine information or information related to the protection of public safety, the county shall receive approval from the Assistant Director for Community Corrections.

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

Stats. Implemented: ORS 137.077, 179.040, 423.020, 423.030 & 423.075

Hist.: CD 12-1979, f. & ef. 5-17-79; CD 2-1983, f. & ef. 1-4-83; CD 45-1985, f. & ef. 8-16-85; CD 52-1986, f. & ef. 11-20-86; CD 25-1990, f. & cert. ef. 12-4-90; CD 15-1993, f. 6-7-93, cert. ef. 6-25-93; CD 1-1998, f. 1-23-98, cert. ef. 2-1-98; DOC 29-2008(Temp), f. & cert. ef. 12-16-08 thru 6-12-09

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**Rule Caption:** Employee Access to Inmate and Offender Files.

**Adm. Order No.:** DOC 30-2008(Temp)

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 12-16-08 thru 6-12-09

**Notice Publication Date:**

**Rules Amended:** 291-070-0120

**Subject:** This temporary rule amendment is necessary to protect the confidentiality and integrity of inmate/offender records and make clear to employees their obligation to protect and keep secure the Department's information assets and public information when accessing inmate/offender files.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-070-0120

#### Access to Files

(1) Only employees of the Department of Corrections and representatives of criminal justice agencies shall have authorized access to inmate and offender files. Department of Corrections employees shall request access to inmate/offender files for business purposes directly related to the employee's current position duties and responsibilities only.

(a) An example of acceptable access would include an employee reviewing an inmate's/offender's file because the inmate/offender is in the employee's housing unit or on the employee's caseload.

(b) An example of unacceptable access would include an employee reviewing the file on their neighbor for personal background purposes.

(2) The Records Office is a restricted area; only individuals authorized by the OISC Administrator or institution functional unit manager shall enter the Records Office.

(a) In emergency situations, the institution functional unit manager or designee may designate an employee to enter the Records Office and remove working files.

(b) A list of these authorized individuals may be posted in the Records Office.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075

Stat Impl: ORS 179.040, 423.020, 423.030, 423.075

Hist.: DOC 9-2008, f. & cert. ef. 4-10-08; DOC 30-2008(Temp), f. & cert. ef. 12-16-08 thru 6-12-09

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

**Adm. Order No.:** DOC 31-2008(Temp)

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 12-16-08 thru 6-12-09

**Notice Publication Date:**

**Rules Amended:** 291-127-0260

**Subject:** 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 members regarding the recent revisions. The main concern expressed was the inability, under the recent revision, of an inmate housed in DSU or IMU to receive visits from one or more 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 temporary amendment will permit inmates housed in DSU and IMU to receive visits from more than one child.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-127-0260

#### Time, Length, and Place of Visits

(1) The time, length, and place of visits shall be posted at the visiting desk and visiting room of each Department of Corrections facility.

(2) Termination of Visits: Visits may be terminated by the facility superintendent or designated staff at their discretion at any time due to space limitations or as deemed necessary to maintain the safety, security, health and good order of the facility, or the safety and security of other inmates, staff, visitors, contractors or the community.

(3) Visitors who engage in a disturbance or other inappropriate conduct as defined in these rules, or who loiter in or about a Department of Corrections facility, shall be subject to removal from the facility by Department staff. The officer-in-charge of the facility may notify law enforcement officials for assistance if the visitor refuses to leave the facility when requested by Department staff.

(4) Except for minimum-security facilities, privileged visiting normally occurs five days per week, including state holidays. Due to physical plant design, work environment or staff level, facilities may limit or expand number of days, length, and time of visits at the discretion of the superintendent. The Oregon State Penitentiary will provide visits seven days per week.

(5) Inmates Assigned to General Population:

(a) Visitation for inmates assigned to general population shall take place during regular visiting hours.

(b) Except for minimum-security facilities, visitors will be accommodated on a first come, first serve basis. Facilities may schedule appointments for visiting.

(c) Basic Visiting:

(A) An inmate assigned to general population in a Department of Corrections facility whose visits are restricted to basic visiting shall be permitted eight visiting sessions per month, four of which must occur on weekdays.

(B) Only two visitors shall be allowed. A third person shall be permitted if he/she is under three years of age and is held on the lap. Exceptions may be specifically authorized by the superintendent or designee.

(C) Duration of visits shall be established by the facility superintendent or designee, and shall be limited to no more than one hour in length, depending upon space availability

(6) Disciplinary Segregation:



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(a) Inmates assigned to Disciplinary Segregation may be permitted basic visiting with two visitors whom they have selected from their visiting list. The inmate's own children, as defined in OAR 291-127-0250, are exempt from the total of two visitors. The two visitors selected may be changed every six months.

(b) Visits shall be scheduled in advance, and limited to one visit per week.

(c) Duration of visits shall be established by the facility superintendent or designee, and shall be limited to no more than one hour in length, depending upon space availability.

(7) Death Row: Inmates assigned to Death Row who are approved for visiting shall be permitted two visits per week with approved visitors on their visiting list. The maximum length of visits is limited to two hours, depending upon space availability. Visits shall be scheduled in advance.

(8) Administrative Housing: Inmates assigned to Administrative Housing may be permitted visits with approved visitors on their visiting list. The facility superintendent or designee shall determine the duration of the visit based upon space availability. Visits shall be scheduled in advance.

(9) Mental Health Infirmary (MHI): Inmates assigned to an MHI at a Department of Corrections facility may be permitted visits with approved visitors on their visiting list in the unit or the main visiting room, subject to recommendation of a psychiatrist and with the approval of the facility superintendent/designee. The facility superintendent or designee shall direct the type of visiting permitted (privileged or basic), upon recommendation of the psychiatrist. No minor children will be permitted to visit with the inmate if the visit occurs in the unit. Visitors must call in advance to schedule a visiting appointment.

(10) Intensive Management Unit (IMU):

(a) Inmates assigned to an Intensive Management Unit or cell may be permitted basic visiting with two visitors whom they have selected from their visiting list. The inmate's own children, as defined in OAR 291-127-0250, are exempt from the total of two visitors. The two visitors selected may be changed every six months. Visits will be based on the inmate's program level.

(b) Visits will be conducted in a designated basic visiting area for IMU status inmates. Visits shall be scheduled in advance.

(11) Infirmary: Inmates assigned to the Infirmary at a Department of Corrections facility may be permitted visits as follows:

(a) Inmates who are permanently assigned to the Infirmary at a Department of Corrections facility may be permitted privileged visiting in the main visiting area with approved visitors on their visiting list, upon recommendation of Health Services staff. Visitation by inmates approved for privileged visiting in the main visiting area shall be subject to the 24 visiting point system set forth in OAR 291-127-0250.

(b) Inmates who are patients in the Infirmary, but are not permanently assigned to the Infirmary, and who are approved for privileged visiting may be permitted visits with two adult visitors whom they have selected from their visiting list in the Infirmary, except as otherwise recommended by Health Services staff or the facility superintendent or designee. The two visitors selected may be changed every six months. Visits shall be scheduled in advance.

(c) Inmates participating in a Department of Corrections Hospice program may be permitted extended visitation on a case-by-case basis, upon recommendation of Health Services staff and as authorized by facility superintendent or designee. Visitation in the Hospice program is not a part of the regular visitation program.

(d) Community Hospitalization: Inmates assigned to community hospitalization and under Department of Corrections supervision may be permitted visits as follows:

(A) Inmates assigned to general population and the Infirmary in a Department of Corrections facility prior to their current hospital admission may be permitted visiting during the course of their hospital stay, upon authorization of the facility superintendent and consent of the attending physician or hospital administration.

(i) Visits must be scheduled in advance with institution staff. Visits shall be during normal hospital visiting hours.

(ii) Duration of visits shall be determined by the superintendent/designee.

(B) Inmates assigned to the Disciplinary Segregation Unit, Administrative Segregation Unit, Special Management Unit, and Death Row prior to their current hospital admission will only be permitted visits on a case-by-case basis, upon recommendation of Health Services staff, and as authorized by the facility superintendent or designee.

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

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

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05; DOC 8-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08; DOC 24-2008, f. & cert. ef. 9-26-08; DOC 31-2008(Temp), f. & cert. ef. 12-16-08 thru 6-12-09

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**Rule Caption:** Inmate Trust Accounts.

**Adm. Order No.:** DOC 32-2008

**Filed with Sec. of State:** 12-24-2008

**Certified to be Effective:** 12-26-08

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 291-158-0005, 291-158-0010, 291-158-0015, 291-158-0025, 291-158-0035, 291-158-0045, 291-158-0055, 291-158-0065, 291-158-0075

**Subject:** Amendment of these rules is necessary to update and clarify policies and procedures for the establishment and administration of inmate trust accounts; and to clarify and conform the rules to reflect the Department's historical practice to assess inmate trust accounts for court-ordered cost and fees in judicial review proceedings, in habeas-corpus and post-conviction cases, in tort actions against a public body, and in other proceedings as authorized or required by law. This applies retroactively to assessments made by the Department against an inmate's trust account for these purposes prior to, on, or after the effective date of the rule amendments.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-158-0005

### Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policies and procedures for the establishment and administration of inmate trust accounts, and the safeguarding of inmate funds for use for authorized expenditures and assessments during incarceration and to assist in offsetting the costs of the release plan.

(3) Policy:

(a) It is the policy of the Department of Corrections to restrict the use of inmate funds for authorized purposes. The Department will control and safeguard inmate funds utilizing accepted accounting procedures. Monies received which are not in accordance with these rules will be considered contraband and will be placed in the Inmate Welfare Fund. Every person who is charged with processing inmate money or trust funds shall follow these rules.

(b) It is the policy of the Department of Corrections to assess an inmate's account for court-ordered costs and fees in judicial review proceedings, in habeas corpus and post-conviction cases, in tort actions against a public body, and in other proceedings as authorized or required by law. The Department intends that its rules authorizing assessments against an inmate's account for these purposes apply retroactively to assessments made by the Department prior to, on, and after the effective date of these rules.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075

Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93; DOC 16-2008(Temp), f. & cert. ef. 7-1-08 thru 12-26-08; DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

## 291-158-0010

### Definitions

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Designated Funds: Funds sent to any inmate for a specific service or item authorized by the functional unit manager.

(3) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(4) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(5) Garnishment: A statutory proceeding whereby an inmate's property, money, or credits in possession or under control of or owned by

# ADMINISTRATIVE RULES

another are applied to payments of former debt to a third party by proper statutory process against the debtor or garnishee.

(6) Incidental Monies: Financial assistance allocated to an inmate upon release, for the purpose of purchasing essential goods or services related to release needs, based upon trust account history, as determined by the functional unit manager.

(7) Inmate: Any person under the supervision of the Department of Corrections for whom the Department has created and maintained a trust account administered by the Department's Central Trust Unit.

(8) Inmate Welfare Fund: An account established to provide monies to enhance programs and activities that benefit the general inmate population.

(9) Money: Cash, money orders, personal checks, warrants, certified checks, and other remittances.

(10) Photo Identification: Any government-issued photo identification that contains a current home address.

(11) Receipts: Official Department of Corrections money receipts which are used to record receipt of money on behalf of or for the use of inmates.

(12) SID Number: A unique State Identification Number (SID) assigned to each inmate reported to the Oregon State Police Identification Services Section.

(13) Signature Authorization Form (CD 1465): The official form designated by Central Trust that contains the signatures of each staff member authorized by their specific functional unit manager or designee to approve completed withdrawal request forms (CD-28) for designated inmate expenditures.

(14) Trust Account Funds: Those monies deposited to an inmate's trust account which may be used by the inmate to purchase authorized items or services during his/her incarceration, or be assessed by the functional unit to pay any indebtedness incurred while under the supervision of the Department of Corrections.

(15) Trust Funds: Inmate money in the care and custody of the Department of Corrections that is deposited with the State Treasurer and managed by the Department of Corrections.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075  
Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075  
Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93; DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

## 291-158-0015

### Trust Accounts

(1) The Department of Corrections Central Trust Unit will establish one trust account for each inmate which corresponds to the SID number issued. The account will accrue interest at a rate determined by applicable statutes. All monies received for an inmate that are authorized for receipt in accordance with the provisions of these rules shall be credited to the inmate's trust account.

(2) The Department of Corrections may assess an inmate's trust account for sanctions resulting from the inmate's disciplinary hearings; garnishment actions determined by the courts; court-ordered costs and fees in judicial review proceedings, in habeas corpus and post-conviction cases, in tort actions against a public body, or in other proceedings as authorized or requirement by law; damages or destruction caused by willful misconduct; costs associated with the facility, release, and programs; copies; postage; medically required services including prostheses or other devices; authorized self-elected activities; or to correct illegal and erroneous transactions. Inmates who are indebted to the Department shall have their trust account debited and funds disbursed in accordance with the provisions of OAR 291-158-0065.

(3) Records of all monies received in the trust account during incarceration will be tallied and the total figure may be the basis for approval or denial of incidental monies in accordance with ORS 421.125 and the Department of Corrections rule on Release Subsidies (Inmate) (OAR 291-057)

(4) Central Trust shall send each inmate with an active trust account a monthly trust statement that reflects the transactions for the monthly period.

(a) If an inmate has any questions regarding the statement, he/she must submit those questions in writing within 30 days of the statement issue date. Questions regarding account balances or whether transactions have been posted must be submitted to the institution business office.

Questions regarding the accuracy of the transactions must be submitted to Central Trust.

(b) Each inmate shall be responsible for retaining his/her own trust statement. Additional copies of the monthly trust statement shall be available for purchase by inmates from Central Trust at a cost of \$.50 per page.

(5) Funds held in an inmate's trust account shall be disbursed to the inmate upon release from a Department of Corrections facility, unless the funds are subject to setoff by the Department in accordance with the provisions of OAR 291-158-0065. An inmate approaching release shall not be allowed to initiate a withdrawal request within seven days of the scheduled release.

(6) Any monetary transaction made on behalf of one inmate for the benefit of another is prohibited.

(a) Transfer of funds from one inmate's trust account to another inmate's trust account, including transfers that are made or facilitated by a person who is not under the supervision of the Department of Corrections or by a financial institution, is prohibited.

(b) Funds received by the Department for an inmate that become the subject of an investigation by Central Trust or the Department's Special Investigations Unit may be held by the Department in the inmate's miscellaneous reserve account pending the outcome of the investigation.

(7) Any funds held in an inmate trust account that remain unclaimed two years after the inmate's release from custody of the Department of Corrections or death shall be reported to the Division of State Lands for proper disposition.

(8) Any stale dated checks processed from trust funds that are two years old shall be reported to the Division of State Lands for proper disposition.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075  
Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Former sections (7), (8), (9), (10), (11) & (12) renumbered to 291-158-0025, 291-158-0035, 291-158-0045, 291-158-0055, 291-158-0065 & 291-158-0075; DOC 16-2008(Temp), f. & cert. ef. 7-1-08 thru 12-26-08; DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

## 291-158-0025

### Designated Funds

(1) An inmate may receive and expend funds designated for a specific purpose only as authorized by the functional unit manager or designee. No designated funds may be received or expended by an inmate unless the sender provides a verifiable name and address.

(2) The functional unit manager or designee may authorize an inmate's receipt and expenditure of designated funds for optical, medical or dental services, or emergency trips, irrespective of whether the inmate's trust account is indebted.

(3) The functional unit manager or designee may authorize an inmate's receipt and expenditure of designated funds for other approved purposes only if the inmate's trust account is not indebted.

(4) If an inmate has unused designated funds in excess of \$10, the funds shall be returned to the sender. Unused designated funds in an amount of \$10 or less shall be applied first to the inmate's indebtedness, if any, and then credited to the inmate's trust account.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075  
Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(7); DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

## 291-158-0035

### Interest Accruals

Interest on all inmate accounts which accrues from investments made by the State Treasurer will be credited monthly to each inmate's trust account.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075  
Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(8); DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

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## 291-158-0045

### Authorized Receipts

(1) The Department of Corrections will accept and process authorized money items received by Central Trust only in the form prescribed by and in accordance with the provisions of these rules, OAR 291-158-0005 to 291-158-0075.

(a) Authorized money items must be made payable to the Department of Corrections, and must include the name and SID number of the inmate, and the name and current address of the sender, on the face of the remittance.

(b) Only one inmate trust account may be credited per remittance. Authorized money items should be mailed directly to the Department of Corrections, Central Trust, PO Box 14400, Salem, OR 97309-5077. Any remittance mailed to the Department must contain the sender's name and current residence address on the envelope.

(c) The Department's Central Trust Office will provide an inmate with a receipt for authorized money items received and credited to the inmate's trust account. Central Trust will retain a copy of the original remittance in accordance with the State Archivist retention schedule.

(d) The Department of Corrections may require that a photo ID be submitted along with any remittance. Photo ID maybe photocopied to be used for documentation purposes.

(2) Monies received in the form of a cashier's check, money order, or other remittance received in accordance with these rules may be credited to the inmate's account.

(3) Monies received in the form of federal or state government checks, insurance claim, or other checks or remittance in settlement of a legal action shall be processed in the same manner as a cashier check or money order.

(a) Checks requiring the inmate's endorsement will be sent to the appropriate functional unit to obtain the inmate's endorsement, and once obtained will be returned to Central Trust for processing.

(b) Checks made payable jointly to the inmate and a second party will be returned to the sender.

(4) No Cash or Personal Checks Permitted: Monies received in the form of cash and personal checks shall not be credited to an inmate's trust account.

(a) Cash received in the mail shall be confiscated and deposited to the Inmate Welfare Fund. Notice of the confiscation shall be provided to the sender. A copy of the notice shall be provided to the intended inmate recipient. If the cash was concealed, the method of concealment will be documented. If, after an administrative review of the confiscation, it is determined that the sender did not conceal the cash, the money shall be returned to the sender. Only the sender may request an administrative review.

(b) Cash confiscated via the disciplinary process will be deposited in the Inmate Welfare Fund, unless otherwise directed by the hearings officer.

(c) Personal checks shall be returned to the sender with the envelope and its contents along with a Mail Violation Notice and explanation for the return of the items. A photocopy of all the items shall be retained by Central Trust for at least six months.

#### (5) Unidentifiable Funds:

(a) Any remittance that is intended to be credited to an inmate's trust account that lacks sufficient information for the Department of Corrections to identify the inmate or to return the remittance to the sender will be placed and held by the Department in a special account for unidentifiable funds for up to two years.

(b) Any unclaimed funds which have been held by the Department for two years shall be turned over to the Division of State Lands for disposition.

#### (6) Restitution:

(a) An inmate may be required to pay restitution to the Department of Corrections or to an individual or other third party for damages incurred as a result of the inmate's misconduct in accordance with the Department's rule of Prohibited Inmate Conduct (OAR 291-105).

(b) Restitution payments may be ordered paid from the inmate's trust account, or from any other inmate's trust account over which the Department has exercised control pending a decision regarding disposition of confiscated funds.

#### (7) Central Trust Processing of Non-Money Items:

(a) Non-money items (e.g., correspondence, notes, photographs, etc.) intended for an inmate must be mailed directly to the inmate at the Department of Corrections facility where the inmate is incarcerated in accordance with the Department's rule on Mail (Inmate) (OAR 291-131).

(b) Non-money items received by Central Trust, except those received from a government agency, will not be forwarded to the inmate, and will be

discarded unless the item(s) has an obvious and apparent monetary (as opposed to sentimental) value, in which case the item(s) will be returned to the sender together with a Mail Violation Notice (CD 618a).

[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 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(9); DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

## 291-158-0055

### Authorized Expenditures

(1) Authorized Purchases, Payments and Disbursements: An inmate may authorize the Department's Central Trust to withdraw funds from his/her trust account for authorized purchases or payments.

(a) Inmates desiring to make authorized purchases or payments must submit a completed Request for Withdrawal of Funds form (CD28) for each transaction. The Request for Withdrawal must include the inmate's signature and the signature of an authorized staff member as approved by the functional unit manager on the Signature Authorization form (CD 1465).

(b) The Department, in its sole discretion, may require that inmates first accumulate sufficient funds in their trust account to cover the entire cost of a requested purchase or payment before authorizing the transaction.

#### (2) Purchases:

(a) Inmates may use their trust account funds to purchase authorized personal necessities, commissary items, photocopies, postage, Board of Parole and Post Prison Supervision materials, and such other items as authorized for inmate purchase by the Department of Corrections.

(b) Requests to purchase materials from the Board of Parole and Post Prison Supervision must be sent directly to the Board prior to submitting a completed withdrawal request, to determine if the materials are available and may be disclosed.

#### (3) Payments:

(a) Support Payments, Court Orders, and Judgments: Inmates may use their trust account funds to make payments for child, spouse or family support (whether court ordered or self-elected), and to satisfy court orders and judgments (e.g., restitution orders, garnishment orders, judgments for filing fees and courts costs).

(b) Self-Elected Programs, Services and Assistance: Inmates may use their trust account funds to make payments for self-elected programs, services, assistance and Private Sector Prison Industries Program, as authorized by the Department (e.g., education programs, inmate hair salon services, etc.).

(c) Disbursement of Excess Funds: Inmates who are not indebted to the Department of Corrections, may request Central Trust to disburse a portion of their trust account funds in excess of their personal needs, and that of their dependents, to a third party (other than a Department of Corrections inmate or family member of another Department of Corrections inmate) for legitimate and verifiable purposes. Requests must be directed in writing to the facility functional unit manager or designee for approval.

(4) Processing of Withdrawal Requests: Each inmate expenditure from the individual trust account will require the inmate to submit a completed withdrawal request (CD 28). The inmate must sign the withdrawal request form in the presence of Department staff before sending the form to the functional unit manager or designee for approval.

(5) Only a withdrawal request with the authorized employee signature will be recorded on the inmate trust account. If funds are not available to cover the withdrawal request, the form will be returned to the inmate marked with an explanation.

(a) If the Department requires that an inmate first accumulate sufficient funds before authorizing a requested purchase or payment, and the inmate lacks sufficient funds, the withdrawal request form will be returned to the inmate, together with a brief statement on the form explaining the reason(s) for its return.

(b) Transactions will be recorded on the inmate's monthly trust account statement by referencing only the withdrawal request, and transaction date.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075

Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(10); DOC 16-2008(Temp), f. & cert. ef. 7-1-08 thru 12-26-08; DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08



# ADMINISTRATIVE RULES

291-158-0065

## Indebted Funds

(1) An inmate who is indebted to the Department of Corrections for whatever reason shall be permitted to spend on commissary during the calendar month one half of the first \$60 (up to \$30) of funds that have been received and posted for that inmate during the calendar month.

(a) The remainder of the funds received by the inmate during the calendar month shall be applied to the inmate's debt until such indebtedness is satisfied, in accordance with the procedures provided in these rules.

(b) Any unused funds remaining in an inmate's trust account at the end of the last business day of the calendar month shall be applied to the inmate's indebtedness. Any changes to this scheduled date will be communicated by Central Trust.

(2) Each calendar month, Central Trust shall notify each affected inmate through the monthly statement that the Department has applied some or all of the funds received in the prior calendar month to the inmate's indebtedness. The notice shall advise the inmate that he or she may obtain an administrative review of the proposed collection of debt as indicated in section (3) below.

(3) Administrative Review:

(a) An inmate who has received a notice of proposed collection of debt from the Central Trust Unit may obtain an administrative review by writing to the Central Trust Unit on an Inmate Communication form (CD 214). The request must state the specific reason(s) why the inmate believes an error(s) had occurred in the proposed collection of debt. Requests for administrative review must be received by the Central Trust Unit no later than 30 days after the date of the notice to be valid.

(b) If an inmate submits a timely request for administrative review of the Department's proposed collection of debt, the Central Trust technician shall examine the relevant records maintained by the Department to determine whether the proposed collection of debt is proper. After review of the relevant records, the Central Trust Manager or designee will issue the final decision in writing to either allow or disallow, in whole or in part, the proposed collection of debt within 30 days after receipt of the request for administrative review. A copy of the final decision letter shall be provided to the requesting inmate.

(4) Annual Holiday Period: During one annual holiday period, the Assistant Director of Operations or Institution Administrator may allow a standard increase in the amount of funds an inmate may spend from their trust account designated for the purchase of gifts or other approved items. The standard increase and holiday period will be the same for all functional units and will be exempt from collection for an inmate's Department of Corrections debt. Any unused funds remaining to an inmate's trust account at the end of the designated period will be applied to the inmate's indebtedness.

[ED. NOTE: Forms referenced are available from the agency]

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075

Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, 423.075

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(11); DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

291-158-0075

## Receipting, Securing, and Transferring Funds

(1) All receipting, securing, and transferring of inmate funds will be processed in accordance with the provision of the Department of Corrections policy on Receipting, Securing, and Depositing Funds, #30.1.3.

(2) Uniform accounting procedures will be required for all Departments of Corrections employees handling funds.

(3) All money received will be receipted and photocopied, with the photocopy of the remittance retained according to the State Archivists retention schedule.

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

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

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(12); DOC 32-2008, f. 12-24-08, cert. ef. 12-26-08

## Department of Environmental Quality Chapter 340

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

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**Rules Amended:** 340-200-0040, 340-216-0020, 340-216-0060, 340-228-0600, 340-228-0602, 340-228-0603, 340-228-0606, 340-230-0300, 340-230-0310, 340-230-0320, 340-230-0330, 340-230-0340, 340-230-0350, 340-238-0040, 340-238-0060, 340-238-0090, 340-242-0520, 340-244-0020, 340-244-0030, 340-244-0100, 340-244-0210, 340-244-0220

**Rules Repealed:** 340-228-0604, 340-228-0605, 340-228-0608, 340-228-0610, 340-228-0612, 340-228-0614, 340-228-0616, 340-228-0618, 340-228-0620, 340-228-0622, 340-228-0624, 340-228-0626, 340-228-0628, 340-228-0630, 340-228-0632, 340-228-0634, 340-228-0636, 340-228-0638, 340-228-0640, 340-228-0642, 340-228-0644, 340-228-0646, 340-228-0648, 340-228-0650, 340-228-0652, 340-228-0654, 340-228-0656, 340-228-0658, 340-228-0660, 340-228-0662, 340-228-0664, 340-228-0666, 340-228-0668, 340-228-0670, 340-228-0671, 340-228-0672, 340-228-0673, 340-228-0674, 340-228-0676, 340-228-0678, 340-232-0070, 340-238-0050, 340-244-0110, 340-244-0120, 340-244-0130, 340-244-0140, 340-244-0150, 340-244-0160, 340-244-0170, 340-244-0180

**Subject:** The Oregon Environmental Quality Commission (EQC) adopted standards that implement and in some cases go beyond new and amended federal air quality regulations. The objective of this rulemaking was to ensure that the emissions reductions required under the new and amended federal air quality regulations are made in Oregon, and to go beyond the federal regulations where further reductions are needed to protect Oregonians. The expected result of this rule is the maintenance of Oregon's delegation of the federal standards, the use of low mercury coal and/or mercury controls in Oregon, and the reduction of benzene emissions in Oregon.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

### 340-200-0040

#### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, **42 U.S.C.A 7401 to 7671q**.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 12, 2008.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-216-0020

### Applicability

This division applies to all sources referred to in **Table 1**. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010.

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.

(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert.

ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-216-0060

### General Air Contaminant Discharge Permits

(1) Applicability.

(a) The Commission may issue a General ACDP under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the sources can be contained in a General ACDP;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all sources covered by the General ACDP; and

(D) The pollutants emitted are of the same type for all covered sources.

(b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements;

(B) Generic PSELs for all pollutants emitted at more than the de minimis level in accordance with OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and

(D) A permit duration not to exceed 10 years.

(c) Permit issuance procedures: A General ACDP requires public notice and opportunity for comment in accordance with ORS 183.325 to 183.410. All General ACDPs are on file and available for review at the Department's headquarters.

(2) Source assignment:

(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.

(b) Fees. Applicants must pay the fees set forth in **Table 2** of OAR 340-216-0020.

(c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until the Department assigns the General ACDP to the person.

(C) Assignments to General ACDPs terminate when the General ACDP expires or is modified, terminated or revoked.

(3) Commission Initiated Modification. If the Commission determines that the conditions have changed such that a General ACDP for a category needs to be modified, the Commission may issue a new General ACDP for that category and the Department may assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), the Department may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to the source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP the Department will place the source on a Simple or Standard ACDP. The Commission may also revoke a General ACDP if conditions, standards or rules have changed so the permit no longer meets the requirements of this rule.

(5) General ACDPs adopted by reference. The following General ACDPs are adopted by this reference and incorporated herein:

(a) AQGP-001, Hard chrome platers (February 3, 2006)3;

(b) AQGP-002, Decorative chrome platers (February 3, 2006)2;

(c) AQGP-003, Halogenated solvent degreasers — batch cold (August 10, 2001)2;

(d) AQGP-004, Halogenated solvent degreasers — batch vapor and in-line (December 12, 2008)2;

(e) AQGP-005, Halogenated solvent degreasers — batch cold, batch vapor, and in-line (December 12, 2008)2;

(f) AQGP-006, Dry cleaners (August 10, 2001)1;

(g) AQGP-007, Asphalt plants (October 17, 2007)3;

(h) AQGP-008, Rock crushers (October 17, 2007)2;

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- (i) AQGP-009, Ready-mix concrete (October 17, 2007)1;
- (j) AQGP-010, Sawmills, planing mills, millwork, plywood manufacturing and veneer drying (October 17, 2007)3;
- (k) AQGP-011, Boilers (October 17, 2007)2;
- (l) AQGP-012, Crematories (October 17, 2007)2;
- (m) AQGP-013, Grain elevators (August 10, 2001)1;
- (n) AQGP-014, Prepared feeds, flour, and cereal (August 10, 2001)1;
- (o) AQGP-015, Seed cleaning (August 10, 2001)1;
- (p) AQGP-016, Coffee roasters (August 10, 2001)1;
- (q) AQGP-017, Bulk gasoline plants (December 12, 2008)1;
- (r) AQGP-018, Electric power generators (August 10, 2001)2;
- (s) AQGP-019, Clay ceramics (December 12, 2008)1;
- (t) AQGP-020, Hospital sterilizers (December 12, 2008)4;
- (u) AQGP-021, Secondary nonferrous metals (December 12, 2008)1;
- (v) AQGP-022, Gasoline dispensing facilities — stage I (December 12, 2008)5;
- (w) AQGP-023, Gasoline dispensing facilities — stage II (December 12, 2008)4;
- (z) AQGP-024, Wood preserving — (December 12, 2008)4.

NOTES: <sup>1</sup> The referenced General ACDPs specify that they are Fee Class One under OAR 340-216-0020, Table 2. <sup>2</sup> The referenced General ACDPs specify that they are Fee Class Two under OAR 340-216-0020, Table 2. <sup>3</sup> The referenced General ACDPs specify that they are Fee Class Three under OAR 340-216-0020, Table 2.

NOTE: Except for OAR 340-216-0060(5), this rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-228-0600

### Purpose

This rule establishes the mandatory reduction levels and monitoring provisions for the Utility Mercury Rule, as a means of reducing mercury (Hg) emissions in Oregon.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-228-0601

### Applicability

(1) Except as provided in section (2) of this rule:

(a) The following units in the State shall be coal-fired electric generating units subject to the requirements of OAR 340-228-0600 through 0637: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) If a stationary boiler or stationary combustion turbine that, under subsection (1)(a) of this rule, is not a coal-fired electric generating unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a coal-fired electric generating unit as provided in subsection (1)(a) of this rule on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(2) The units in the State that meet the requirements set forth in paragraph (2)(a)(A) or subsection (2)(b) of this rule are not coal-fired electric generating units:

(a) Any unit that is a coal-fired electric generating unit under subsection (1)(a) or (b) of this rule:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (2)(a)(A) of this rule for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a coal-fired electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year

during which the unit no longer meets the requirements of paragraph (2)(a)(A) of this rule.

(b) Any unit that is a coal-fired electric generating unit under subsection (1)(a) or (b) of this rule, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of:

(A) A State Plan approved by the Administrator of the EPA in accordance with 40 CFR part 60 subpart Cb (emissions guidelines and compliance times for certain large municipal waste combustors);

(B) 40 CFR part 60 subpart Eb (standards of performance for certain large municipal waste combustors);

(C) 40 CFR part 60 subpart AAAA (standards of performance for certain small municipal waste combustors);

(D) A State Plan approved by the Administrator of the EPA in accordance with 40 CFR part 60 subpart BBBB (emission guidelines and compliance times for certain small municipal waste combustion units);

(E) 40 CFR part 62 subpart FFF (Federal Plan requirements for certain large municipal waste combustors); or

(F) 40 CFR part 62 subpart JJJ (Federal Plan requirements for certain small municipal waste combustion units).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-228-0602

### Definitions

(1) "Acid rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

(2) "Acid Rain Program" means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and 40 CFR parts 72 through 78.

(3) "Automated data acquisition and handling system or DAHS" means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under OAR 340-228-0609 through 0637, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required OAR 340-228-0609 through 0637.

(4) "Biomass" means:

(a) Any organic material grown for the purpose of being converted to energy;

(b) Any organic byproduct of agriculture that can be converted into energy; or

(c) Any material that can be converted into energy and is nonmerchandise for other purposes, that is segregated from other nonmerchandise material, and that is;

(A) A forest-related organic resource, including mill residues, pre-commercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(B) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

(5) "Boiler" means an enclosed fossil-or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(6) "Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(7) "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) & epsiv; (incorporated by reference, see 40 CFR 60.17).

(8) "Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(9) "Coal-fired" means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

(10) "Cogeneration unit" means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:



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(a) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(b) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(A) For a topping-cycle cogeneration unit,

(i) Useful thermal energy not less than 5 percent of total energy output; and

(ii) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(B) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

(11) "Combustion turbine" means:

(a) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(b) If the enclosed device under paragraph (a) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

(12) "Commence commercial operation" means, with regard to a unit serving a generator:

(a) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

(A) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences commercial operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(B) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences commercial operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

(b) Notwithstanding paragraph (a) of this definition, for a unit that is not a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences commercial operation as defined in paragraph (a) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a coal-fired electric generating unit under OAR 340-228-0601.

(A) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date remains the unit's date of commencement of commercial operation.

(B) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

(13) "Commence operation" means:

(a) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

(A) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(B) For a unit that is a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

(b) Notwithstanding paragraph (a) of this definition, for a unit that is not a coal-fired electric generating unit under OAR 340-228-0601 on the date the unit commences operation as defined in paragraph (a) of this definition, the unit's date for commencement of operation shall be the date on

which the unit becomes a coal-fired electric generating unit under OAR 340-228-0601.

(A) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(B) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

(14) "Common stack" means a single flue through which emissions from 2 or more units are exhausted.

(15) "Continuous emission monitoring system" or "CEMS" means the equipment required under OAR 340-228-0609 through 0637 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR part 75 and OAR 340-228-0609 through 0637. The following systems are the principal types of CEMS required under OAR 340-228-0609 through 0637:

(a) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(b) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter ( $\mu\text{g}/\text{dscm}$ );

(c) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H<sub>2</sub>O.

(d) A carbon dioxide monitoring system, consisting of a CO<sub>2</sub> concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>; and

(e) An oxygen monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.

(16) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Department by the owner or operator and as determined by the Department in accordance with OAR 340-228-0609 through 0637.

(17) "Generator" means a device that produces electricity.

(18) "Heat input" means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Department by the owner or operator and determined by the Department in accordance with OAR 340-228-0609 through 0637 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(19) "Heat input rate" means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

(20) "Hg CEMS" means a Hg pollutant concentration monitor and an automated DAHS. A Hg CEMS provides a permanent, continuous record of Hg emissions in units of micrograms per standard cubic meter ( $\mu\text{g}/\text{m}^3$ ).

(21) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(a) For the life of the unit;

(b) For a cumulative term of no less than 25 years, including contracts that permit an election for early termination; or

(c) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

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(22) “Lignite” means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D338-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) & epsiv; (incorporated by reference, see 40 CFR 60.17).

(23) “Maximum design heat input” means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.

(24) “Maximum expected Hg concentration (MEC)” means, the maximum expected Hg concentration (MEC) during normal, stable operation of the unit and emission controls. To calculate the MEC, substitute the MPC value from section (25) of this rule into Equation A–2 in section 2.1.1.2 of appendix A to 40 CFR part 75. Base the percent removal efficiency on design engineering calculations.

(25) “Maximum potential Hg concentration (MPC)” means the following:

(a) The maximum potential concentration depends upon the type of coal combusted. For the initial MPC determination, the MPC is one of the following:

(A) The MPC is one of the following default values: 9 µg/m<sup>3</sup> for bituminous coal; 10 µg/m<sup>3</sup> for sub-bituminous coal; 16 µg/m<sup>3</sup> for lignite, and 1 µg/m<sup>3</sup> for waste coal. If different coals are blended, the MPC is the highest MPC for any fuel in the blend; or

(B) The MPC may be based on the results of site-specific emission testing using one of the Hg reference methods in section (33) of this rule or in 40 CFR 75.22, if the unit does not have add-on Hg emission controls, or if testing upstream of these control devices. A minimum of 3 test runs are required, at the normal operating load. The highest total Hg concentration obtained in any of the tests may be used as the MPC; or

(C) The MPC is based on the maximum potential Hg concentration on 720 or more hours of historical CEMS data or data from a sorbent trap monitoring system, if the unit does not have add-on Hg emission controls (or if the CEMS or sorbent trap system is located upstream of the control device) and if the Hg CEMS or sorbent trap system has been tested for relative accuracy against one of the Hg reference methods in section (33) of this rule or in 40 CFR 75.22 and has met a relative accuracy specification of 20.0% or less.

(b) For the purposes of missing data substitution, the fuel-specific or site-specific MPC values defined in subsection (25)(a) of this rule apply to units using sorbent trap monitoring systems.

(26) “Monitoring system” means any monitoring system that meets the requirements of OAR 340-228-0609 through 0637, including a continuous emissions monitoring system or an alternative monitoring system under 40 CFR part 75.

(27) “Nameplate capacity” means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

(28) “NIST traceable elemental Hg standards” means either:

(a) Compressed gas cylinders having known concentrations of elemental Hg, which have been prepared according to the “EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards”; or

(b) Calibration gases having known concentrations of elemental Hg, produced by a generator that fully meets the performance requirements of the “EPA Traceability Protocol for Qualification and Certification of Elemental Mercury Gas Generators”.

(29) “NIST traceable source of oxidized Hg” means a generator that: Is capable of providing known concentrations of vapor phase mercuric chloride (HgCl<sub>2</sub>), and that fully meets the performance requirements of the “EPA Traceability Protocol for Qualification and Certification of Oxidized Mercury Gas Generators”.

(30) “Operator” means any person who operates, controls, or supervises a coal-fired electric generating unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(31) “Owner” means any of the following persons:

(a) Any holder of any portion of the legal or equitable title in a coal-fired electric generating unit;

(b) Any holder of a leasehold interest in a coal-fired electric generating unit; or

(c) Any purchaser of power from a coal-fired electric generating unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such coal-fired electric generating unit.

(32) “Potential electrical output capacity” means 33 percent of a unit’s maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

(33) “Reference method” means any direct test method of sampling and analyzing for an air pollutant as follows or as specified in 40 CFR 75.22.

(a) ASTM D6784–02, “Standard Test Method for Elemental, Oxidized, Particle-Bound, and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources” (Ontario Hydro Method) is the reference method for determining Hg concentration.

(b) Method 29 (40 CFR Part 60, Appendix A-8) for determining Hg concentration.

(c) Method 30A (40 CFR Part 60, Appendix A), “Determination of Total Vapor Phase Mercury Emissions from Stationary Sources (Instrumental Analyzer Procedure)” for determining Hg concentration.

(d) Method 30B (40 CFR Part 60, Appendix A), “Determination of Total Vapor Phase Mercury Emissions from Coal-Fired Combustion Sources Using Carbon Sorbent Traps” for determining Hg concentration.

(e) Method 29 (40 CFR Part 60, Appendix A-8) may be used with these caveats: The procedures for preparation of Hg standards and sample analysis in sections 13.4.1.1 through 13.4.1.3 ASTM D6784–02 must be followed instead of the procedures in sections 7.5.33 and 11.1.3 of Method 29, and the QA/QC procedures in section 13.4.2 of ASTM D6784–02 must be performed instead of the procedures in section 9.2.3 of Method 29. The tester may also opt to use the sample recovery and preparation procedures in ASTM D6784–02 instead of the Method 29 procedures, as follows: sections 8.2.8 and 8.2.9.1 of Method 29 may be replaced with sections 13.2.9.1 through 13.2.9.3 of ASTM D6784–02; sections 8.2.9.2 and 8.2.9.3 of Method 29 may be replaced with sections 13.2.10.1 through 13.2.10.4 of ASTM D6784–02; section 8.3.4 of Method 29 may be replaced with section 13.3.4 or 13.3.6 of ASTM D6784–02 (as appropriate); and section 8.3.5 of Method 29 may be replaced with section 13.3.5 or 13.3.6 of ASTM D6784–02 (as appropriate).

(f) Whenever ASTM D6784–02 or Method 29 is used, paired sampling trains are required. To validate a RATA run or an emission test run, the relative deviation (RD), calculated according to OAR 340-228-0627(12)(g), must not exceed 10 percent, when the average concentration is greater than 1.0 µg/m<sup>3</sup>. If the average concentration is ≤1.0 µg/m<sup>3</sup>, the RD must not exceed 20 percent. The RD results are also acceptable if the absolute difference between the Hg concentrations measured by the paired trains does not exceed 0.03 µg/m<sup>3</sup>. If the RD criterion is met, the run is valid. For each valid run, average the Hg concentrations measured by the two trains (vapor phase, only).

(g) When Method 29 or ASTM D6784–02 is used for the Hg emission testing required under OAR 340-228-0613(3) and (4), locate the reference method test points according to section 8.1 of Method 30A, and if Hg stratification testing is part of the test protocol, follow the procedures in sections 8.1.3 through 8.1.3.5 of Method 30A.

(34) “Repowered” means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(a) Atmospheric or pressurized fluidized bed combustion;

(b) Integrated gasification combined cycle;

(c) Magnetohydrodynamics;

(d) Direct and indirect coal-fired turbines;

(e) Integrated gasification fuel cells; or

(f) As determined by the Department in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (a) through (e) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly

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greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(35) "Sequential use of energy" means:

(a) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(b) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

(36) "Sorbent trap monitoring system" means the equipment required for the continuous monitoring of Hg emissions, using paired sorbent traps containing iodinated charcoal (IC) or other suitable reagent(s). This excepted monitoring system consists of a probe, the paired sorbent traps, a heated umbilical line, moisture removal components, an airtight sample pump, a dry gas meter, and an automated data acquisition and handling system. The monitoring system samples the stack gas at a rate proportional to the stack gas volumetric flow rate. The sampling is a batch process. Using the sample volume measured by the dry gas meter and the results of the analyses of the sorbent traps, the average Hg concentration in the stack gas for the sampling period is determined, in units of micrograms per dry standard cubic meter ( $\mu\text{g}/\text{dscm}$ ). Mercury mass emissions for each hour in the sampling period are calculated using the average Hg concentration for that period, in conjunction with contemporaneous hourly measurements of the stack gas flow rate, corrected for the stack gas moisture content.

(37) "Subbituminous" means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) (incorporated by reference, see 40 CFR 60.17).

(38) "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(a) In person;

(b) By United States Postal Service; or

(c) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(39) "Title V operating permit" means a permit issued under title V of the CAA and 40 CFR part 70 or 71.

(40) "Title V operating permit regulations" means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and 40 CFR part 70 or 71.

(41) "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

(42) "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$\text{LHV} = \text{HHV} - 10.55(\text{W} + 9\text{H})$$

Where:

LHV = lower heating value of fuel in Btu/lb,

HHV = higher heating value of fuel in Btu/lb,

W = Weight % of moisture in fuel, and

H = Weight % of hydrogen in fuel.

(43) "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

(44) "Unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

(45) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(46) "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

(47) "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

(48) "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

(a) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(b) Used in a heat application (e.g., space heating or domestic hot water heating); or

(c) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(49) "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-228-0603

### Untitled

Measurements, abbreviations, and acronyms used in this part are defined as follows:

(1) Btu-British thermal unit.

(2) CO<sub>2</sub>-carbon dioxide.

(3) dscm-dry standard cubic meter.

(4) H<sub>2</sub>O-water.

(5) Hg-mercury.

(6) hr-hour.

(7) kW-kilowatt electrical.

(8) kWh-kilowatt hour.

(9) lb-pound.

(10) m<sup>3</sup>-standard cubic meter.

(11) MMBtu-million Btu.

(12) MWe-megawatt electrical.

(13) MWh-megawatt hour.

(14) NO<sub>x</sub>-nitrogen oxides.

(15) O<sub>2</sub>-oxygen.

(16) ppm-parts per million.

(17) scf-standard cubic foot.

(18) scfh-standard cubic feet per hour.

(19) SO<sub>2</sub>-sulfur dioxide.

(20)  $\mu\text{g}$ -micrograms.

(21) wscm-wet standard cubic meter.

(22) yr-year.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-228-0606

### Hg Emission Standards

(1) Mercury reduction plan. By July 1, 2009 or 1-year prior to commencement of commercial operation, whichever is later, the owner or operator of each coal-fired electric generating unit must develop and submit for Department approval a mercury reduction plan for each coal-fired electric generating unit. The plan must propose a control strategy for mercury that is most likely to result in the capture of at least 90 percent of the mercury emitted from the unit or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input. The owner or operator must demonstrate that the plan reflects technology that could reasonably be expected to meet the limits in this section if the technology operates as anticipated by the manufacturer. The plan must provide a timeframe for implementation of the selected control strategy including major milestones, installation and operation requirements, and work practice standards for the selected technology. The owner and operator of the coal-fired electric generating unit may proceed with the plan within 60 days of submittal unless, within the 60 day period, the Department notifies the owner or operator of the coal-fired electric generating unit that the plan must be revised.

(2) Mercury emission standards. On and after July 1, 2012 or at commencement of commercial startup, whichever is later, except as allowed under section (3) of this rule, each coal-fired electric generating unit must have implemented the approved control strategy projected to achieve at least 90 percent mercury capture or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(3) Compliance extension. Up to a 1-year extension of the requirement to implement the approved control strategy may be granted by the Department if the owner or operator of a coal-fired electric generating unit demonstrates that it is not practical to install mercury control equipment by July 1, 2012 due to supply limitations or other extenuating circumstances that are beyond the control of the owner or operator.

(4) Compliance demonstration. Commencing in July 2013 or 12 months after commercial startup or 12 months after expiration of the extension granted under section (3) of this rule, whichever is later, each coal-fired electric generating unit must thereafter demonstrate compliance with one of the standards in subsections (4)(a) or (4)(b) of this rule for each compliance period, except as allowed under sections (5) and (6) of this rule. A compliance period consists of twelve months. Each month commencing



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with June 2013 or the twelfth month after commencement of commercial operation or twelfth month after expiration of the extension granted under section (3) of this rule, whichever is later, is the end of a compliance period consisting of that month and the previous 11 months.

(a) A mercury emission standard of 0.60 pounds per trillion BTU of heat input calculated by dividing the Hg mass emissions determined using a mercury CEMS or sorbent trap monitoring system by heat input as determined according to 40 CFR part 75, appendix F (procedure 5); or

(b) A minimum 90 percent capture of inlet mercury determined as follows:

(A) Inlet mercury must be determined as specified in subparagraph (4)(b)(A)(i) or (4)(b)(A)(ii) of this rule:

(i) Coal sampling and analysis. To demonstrate compliance by coal sampling and analysis, the owner or operator of a coal-fired electric generating unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of 40 CFR 63.7521.

(ii) Hg mass emissions prior to any control device(s). To demonstrate compliance by measuring Hg mass emissions, the owner or operator of a coal-fired electric generating unit must measure mercury emissions prior to any control device(s) using a Hg CEMS or sorbent trap.

(B) The mercury capture efficiency must be calculated using the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system and the inlet mercury determined using the coal mercury content data obtained in accordance with subparagraph (4)(b)(A)(i) of this rule or the measured inlet mercury data obtained in accordance with subparagraph (4)(b)(A)(ii) of this rule and a calculation methodology approved by the Department.

(5) Temporary compliance alternative. If the owner or operator of a coal-fired electric generating unit properly implements the approved control strategy and the strategy fails to achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input:

(a) The owner or operator must notify the Department of the failure within 30 days of the end of the initial compliance period; and

(b) The owner or operator must file an application with the Department for a permit or permit modification in accordance with OAR 340 division 216 to establish a temporary alternative mercury emission limit. The application must be filed within 60 days of the end of the initial compliance period, and must include a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input and all monitoring and operating data for the coal-fired electric generating unit.

(c) The Department may establish a temporary alternative mercury emission limit only if the owner or operator applies for a permit or permit modification, that includes a control strategy that the Department determines constitutes a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(d) Establishment of a temporary alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category III permit actions

(e) If the owner or operator files an application under subsection (5)(b) of this rule, the coal-fired electric generating unit must operate according to the temporary alternative mercury emission limit proposed in the permit or permit modification application until the Department either denies the application or issues the permit or permit modification. Compliance with the proposed temporary alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (2) of this rule.

(f) A temporary alternative mercury emission limit established in a permit expires July 1, 2015 or within 2 years of commencement of commercial operation, whichever is later.

(6) Permanent compliance alternative. If the owner or operator of a coal-fired electric generating unit is unable to achieve at least 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input by July 1, 2015 or within 2 years of commencement of commercial operation, whichever is later, despite properly implementing the continual program of mercury progression required in section (5) of this rule:

(a) The owner or operator of the coal-fired electric generating unit may file an application with the Department for a permit modification in accordance with OAR 340 division 216 to establish a permanent alternative mercury emission limit that comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(b) The Department may establish a permanent alternative mercury emission limit only if the owner or operator applies for a permit modification, that proposes an alternative mercury emission limit that the Department determines comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(c) Establishment of a permanent alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(d) If the owner or operator files an application under subsection (6)(a) of this rule, the coal-fired electric generating unit must operate according to the permanent alternative mercury emission limit proposed in the permit modification application until the Department either denies the application or modifies the permit. Compliance with the proposed permanent alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (4) of this rule.

(7) Emission Caps. Beginning in calendar year 2018, the following coal-fired electric generating unit specific emission caps shall apply.

(a) Existing Boardman coal-fired electric generating unit cap. The existing coal-fired electric generating unit in Boardman shall emit no more than:

(A) 60 pounds of mercury in any calendar year in which there are no new coal-fired electric generating units operated in Oregon.

(B) 35 pounds of mercury in any calendar year in which there are new coal-fired electric generating units operated in Oregon.

(b) New coal-fired electric generating unit cap:

(A) New coal-fired electric generating units, in aggregate, shall emit no more than:

(i) 25 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is operated.

(ii) 60 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is not operated.

(B) The owner or operator of each new coal-fired electric generating unit must submit to the Department a request, in a format specified by the Department, to receive a portion of the new coal-fired electric generating unit cap. The request may not be submitted until the new coal-fired electric generating unit has received its Site Certification from the Facility Siting Council, or if the new coal-fired electric generating unit is not required to obtain a Site Certificate, all governmental approvals necessary to commence construction.

(C) The Department will allocate the new coal-fired electric generating unit cap in order of receipt of requests and, once allocated, the new coal-fired electric generating unit shall be entitled to receive an equal allocation in future years unless the new coal-fired electric generating unit permanently ceases operations.

(D) Each individual new coal-fired electric generating unit shall emit no more than the lesser of:

(i) An amount of mercury determined by multiplying the design heat input in TBtu of such coal-fired electric generating unit by 0.60 pounds per TBtu rounded to the nearest pound as appropriate, or

(ii) The amount of the emission cap under (7)(b) less the amount of the emission cap under (7)(b) that has been allocated to other new coal-fired electric generating units.

(c) Compliance demonstration. Each coal-fired electric generating unit must demonstrate compliance with the applicable calendar year emission cap in subsection (7)(a) or (7)(b) of this rule using a mercury CEMS or sorbent trap monitoring system.

(5) Recordkeeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Department or the Administrator.

(A) The certificate of representation under OAR 340-228-0618 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents are retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under OAR 340-228-0618 changing the Hg designated representative.

(B) All emissions monitoring information, in accordance with OAR 340-228-0658 through 0670, provided that to the extent that OAR 340-228-

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0658 through 0670 provides for a 3-year period for recordkeeping, the 3-year period applies.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(D) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(b) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source must submit the reports required under the Hg Budget Trading Program, including those under OAR 340-228-0658 through 0670.

(6) Liability.

(a) Each Hg Budget source and each Hg Budget unit must meet the requirements of the Hg Budget Trading Program for the control periods of 2010 through 2017.

(b) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source also applies to the owners and operators of such source and of the Hg Budget units at the source.

(c) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit also applies to the owners and operators of such unit.

(7) Effect on other authorities. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under OAR 340-228-0605 must be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-228-0609

### General Requirements

The owners and operators of a coal-fired electric generating unit must comply with the monitoring, recordkeeping, and reporting requirements as provided in this rule and OAR 340-228-0611 through 0637. For purposes of complying with such requirements, the definitions in OAR 340-228-0602 and in 40 CFR 72.2 shall apply, and the terms "affected unit" and "designated representative" in 40 CFR part 75 shall be deemed to refer to the terms "coal-fired electric generating unit" and "owner or operator" respectively, as defined in OAR 340-228-0602. The owner or operator of a unit that is not a coal-fired electric generating unit but that is monitored under OAR 340-228-0615(2)(a) must comply with the same monitoring, recordkeeping, and reporting requirements as a coal-fired electric generating unit.

(1) Requirements for installation, certification, and data accounting. The owner or operator of each coal-fired electric generating unit must:

(a) Install all applicable monitoring systems required under this rule and OAR 340-228-0611 through 0637 for monitoring Hg mass emissions, inlet Hg (if applicable), and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO<sub>2</sub> or O<sub>2</sub> concentration, as applicable).

(b) Successfully complete all certification tests required under OAR 340-228-0621 and meet all other requirements of this rule and OAR 340-228-0611 through 0637 applicable to the monitoring systems under subsection (1)(a) of this rule.

(c) The owner or operator must reduce all volumetric flow, CO<sub>2</sub> concentration or O<sub>2</sub> concentration, as applicable, and Hg concentration data collected by the monitors to hourly averages.

(d) Record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule.

(e) Failure of a CO<sub>2</sub> or O<sub>2</sub> emissions concentration monitor, Hg concentration monitor, flow monitor, or moisture monitor to acquire the minimum number of data points for calculation of an hourly average shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour.

(2) Compliance deadlines. The owner or operator must meet the monitoring system certification and other requirements of section (1) of this rule on or before the following dates. The owner or operator must record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule on and after the following dates.

(a) Outlet Hg.

(A) For the owner or operator of a coal-fired electric generating unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(B) For the owner or operator of a coal-fired electric generating unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(C) For the owner or operator of a coal-fired electric generating unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under paragraph (2)(a)(A) or (B) of this rule, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

(b) Heat input. For monitoring systems used to monitor heat input in accordance with OAR 340-228-0606(4)(a), if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0606(3); or

(B) The date on which the unit commences commercial operation.

(c) Inlet Hg. If required to perform coal sampling and analysis in accordance with OAR 340-228-0606(4)(b)(A)(i) or measure Hg emission prior to any control device(s) in accordance with OAR 340-228-0606(4)(b)(A)(ii), if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0606(3); or

(B) The date on which the unit commences commercial operation.

(3) Reporting data.

(a) Except as provided in subsection (3)(b) of this rule, the owner or operator of a coal-fired electric generating unit that does not meet the applicable compliance date set forth in section (2) of this rule for any monitoring system under subsection (1)(a) of this rule must, for each monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine Hg mass emissions and heat input in accordance with OAR 340-228-0637(5).

(b) The owner or operator of a coal-fired electric generating unit that does not meet the applicable compliance date set forth in paragraph (2)(a)(C) of this rule for any monitoring system under subsection (1)(a) must, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR part 75 subpart D, OAR 340-228-0631, and 340-228-0633, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subsection (2)(a)(C) of this rule.

(4) Prohibitions.

(a) No owner or operator of a coal-fired electric generating unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this rule and OAR 340-228-0611 through 0637 without having obtained prior written approval.

(b) No owner or operator of a coal-fired electric generating unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this rule and OAR 340-228-0611 through 0637.

(c) No owner or operator of a coal-fired electric generating unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule and OAR 340-228-0611 through 0637.

(d) No owner or operator of a coal-fired electric generating unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this rule, except under any one of the following circumstances:

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(A) The owner or operator is monitoring Hg mass emissions from the coal-fired electric generating unit with another certified monitoring system approved, in accordance with the applicable provisions of this rule and OAR 340-228-0611 through 0637, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(B) The owner or operator submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with OAR 340-228-0621(3)(c)(A).

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-228-0611

#### Additional Requirements to Provide Heat Input Data

The owner or operator of a coal-fired electric generating unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system must also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR part 75, appendix F (procedure 5).

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-228-0613

#### Monitoring of Hg Mass Emissions and Heat Input at the Unit Level

The owner or operator of the affected coal-fired electric generating unit must meet the general operating requirements in 40 CFR 75.10 for the following continuous emission monitors (except as provided in accordance with 40 CFR part 75 subpart E):

(1) A Hg concentration monitoring system (as defined in OAR 340-228-0602) or a sorbent trap monitoring system (as defined in OAR 340-228-0602) to measure Hg concentration; and

(2) A flow monitoring system; and

(3) A continuous moisture monitoring system (if correction of Hg concentration for moisture is required), as described in 40 CFR 75.11(b). Alternatively, the owner or operator may use the appropriate fuel-specific default moisture value provided in 40 CFR 75.11 or 75.12, or a site-specific moisture value approved by the Department; and

(4) If heat input is required to be reported, the owner or operator also must meet the general operating requirements for a flow monitoring system and an O<sub>2</sub> or CO<sub>2</sub> monitoring system to measure heat input rate.

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-228-0615

#### Monitoring of Hg Mass Emissions and Heat Input at Common and Multiple Stacks

(1) Unit utilizing common stack with other coal-fired electric generating unit(s). When a coal-fired electric generating unit utilizes a common stack with one or more coal-fired electric generating units, but no non coal-fired electric generating units, the owner or operator must either:

(a) Install, certify, operate, and maintain the monitoring systems described in OAR 340-228-0613 at the common stack and record the combined Hg mass emissions for the units exhausting to the common stack. If reporting of the unit heat input rate is required, determine the hourly unit heat input rates either by:

(A) Apportioning the common stack heat input rate to the individual units according to the procedures in 40 CFR 75.16(e)(3); or

(B) Installing, certifying, operating, and maintaining a flow monitoring system and diluent monitor in the duct to the common stack from each unit; or

(b) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in OAR 340-228-0613 in the duct to the common stack from each unit.

(2) Unit utilizing common stack with non coal-fired electric generating unit(s). When one or more coal-fired electric generating units utilize a common stack with one or more non coal-fired electric generating units, the owner or operator must either:

(a) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in OAR 340-228-0613 in the duct to the common stack from each coal-fired electric generating unit; or

(b) Install, certify, operate, and maintain the monitoring systems described in OAR 340-228-0613 in the common stack; and

(A) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in OAR 340-228-

0613 in the duct to the common stack from each non coal-fired electric generating unit. The owner or operator must submit a petition to the Department to allow a method of calculating and reporting the Hg mass emissions from the coal-fired electric generating units as the difference between Hg mass emissions measured in the common stack and Hg mass emissions measured in the ducts of the non coal-fired electric generating units, not to be reported as an hourly value less than zero. The Department may approve such a method whenever the owner or operator demonstrates, to the satisfaction of the Department, that the method ensures that the Hg mass emissions from the coal-fired electric generating units are not underestimated; or

(B) Count the combined emissions measured at the common stack as the Hg mass emissions for the coal-fired electric generating units, for recordkeeping and compliance purposes, in accordance with section (1) of this rule; or

(C) Submit a petition to the Department to allow use of a method for apportioning Hg mass emissions measured in the common stack to each of the units using the common stack and for reporting the Hg mass emissions. The Department may approve such a method whenever the owner or operator demonstrates, to the satisfaction of the Department, that the method ensures that the Hg mass emissions from the coal-fired electric generating units are not underestimated.

(c) If the monitoring option in subsection (2)(b) of this rule is selected, and if heat input is required to be reported, the owner or operator must either:

(A) Apportion the common stack heat input rate to the individual units according to the procedures in 40 CFR 75.16(e)(3); or

(B) Install a flow monitoring system and a diluent gas (O<sub>2</sub> or CO<sub>2</sub>) monitoring system in the duct leading from each affected unit to the common stack, and measure the heat input rate in each duct, according to section 5.2 of appendix F to 40 CFR part 75.

(3) Unit with a main stack and a bypass stack. Whenever any portion of the flue gases from a coal-fired electric generating unit can be routed through a bypass stack to avoid the Hg monitoring system(s) installed on the main stack, the owner and operator must either:

(a) Install, certify, operate, and maintain the monitoring systems described in OAR 340-228-0613 on both the main stack and the bypass stack and calculate Hg mass emissions for the unit as the sum of the Hg mass emissions measured at the two stacks;

(b) Install, certify, operate, and maintain the monitoring systems described in OAR 340-228-0613 at the main stack and measure Hg mass emissions at the bypass stack using the appropriate reference methods in OAR 340-228-0602(33) or in 40 CFR 75.22. Calculate Hg mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems;

(c) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in OAR 340-228-0613 only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under 40 CFR 75.53 and OAR 340-228-0637(2), since only the main stack is monitored. For each unit operating hour in which the bypass stack is used, report, as applicable, the maximum potential Hg concentration (as defined in OAR 340-228-0602(25)), and the appropriate substitute data values for flow rate, CO<sub>2</sub> concentration, O<sub>2</sub> concentration, and moisture (as applicable), in accordance with the missing data procedures of OAR 340-228-0631 and 0633, as applicable; or

(d) If the monitoring option in subsection (3)(a) or (b) of this rule is selected, and if heat input is required to be reported, the owner or operator must:

(A) Use the installed flow and diluent monitors to determine the hourly heat input rate at each stack (MMBtu/hr), according to section 5.2 of appendix F to 40 CFR part 75; and

(B) Calculate the hourly heat input at each stack (in MMBtu) by multiplying the measured stack heat input rate by the corresponding stack operating time; and

(C) Determine the hourly unit heat input by summing the hourly stack heat input values.

(4) Unit with multiple stack or duct configuration. When the flue gases from a coal-fired electric generating unit discharge to the atmosphere through more than one stack, or when the flue gases from a coal-fired electric generating unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator must either:



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(a) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in OAR 340-228-0613 in each of the multiple stacks and determine Hg mass emissions from the coal-fired electric generating unit as the sum of the Hg mass emissions recorded for each stack. If another unit also exhausts flue gases into one of the monitored stacks, the owner or operator must comply with the applicable requirements of sections (1) and (2) of this rule, in order to properly determine the Hg mass emissions from the units using that stack;

(b) Install, certify, operate, and maintain the monitoring systems and (if applicable) perform the Hg emission testing described in OAR 340-228-0613 in each of the ducts that feed into the stack, and determine Hg mass emissions from the coal-fired electric generating unit using the sum of the Hg mass emissions measured at each duct, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator must also comply with the applicable requirements of sections (1) and (2) of this rule to determine and record Hg mass emissions from the units using that stack. The owner or operator must calculate Hg mass emissions and heat input rate in accordance with approved procedures; or

(c) If the monitoring option in subsection (4)(a) or (b) of this rule is selected, and if heat input is required to be reported, the owner or operator must:

(A) Use the installed flow and diluent monitors to determine the hourly heat input rate at each stack or duct (MMBtu/ hr), according to section 5.2 of appendix F to 40 CFR part 75; and

(B) Calculate the hourly heat input at each stack or duct (in MMBtu) by multiplying the measured stack (or duct) heat input rate by the corresponding stack (or duct) operating time; and

(C) Determine the hourly unit heat input by summing the hourly stack (or duct) heat input values.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0617

### Special Provisions for Measuring Hg Mass Emissions using the Sorbent Trap Monitoring Methodology

For an affected coal-fired electric generating unit, if the owner or operator elects to use sorbent trap monitoring systems to quantify Hg mass emissions, the guidelines in sections (1) through (11) of this rule must be followed for this monitoring methodology:

(1) For each sorbent trap monitoring system (whether primary or redundant backup), the use of paired sorbent traps, as described in OAR 340-228-0627, is required.

(2) Each sorbent trap must have both a main section, a backup section, and a third section to allow spiking with a calibration gas of known Hg concentration, as described in OAR 340-228-0627.

(3) A certified flow monitoring system is required.

(4) Correction for stack gas moisture content is required, and in some cases, a certified O<sub>2</sub> or CO<sub>2</sub> monitoring system is required.

(5) Each sorbent trap monitoring system must be installed and operated in accordance with OAR 340-228-0627. The automated data acquisition and handling system must ensure that the sampling rate is proportional to the stack gas volumetric flow rate.

(6) At the beginning and end of each sample collection period, and at least once in each unit operating hour during the collection period, the dry gas meter reading must be recorded.

(7) After each sample collection period, the mass of Hg adsorbed in each sorbent trap (in all three sections) must be determined according to the applicable procedures in OAR 340-228-0627.

(8) The hourly Hg mass emissions for each collection period are determined using the results of the analyses in conjunction with contemporaneous hourly data recorded by a certified stack flow monitor, corrected for the stack gas moisture content. For each pair of sorbent traps analyzed, the average of the two Hg concentrations must be used for reporting purposes under OAR 340-228-0637(4). Notwithstanding this requirement, if, due to circumstances beyond the control of the owner or operator, one of the paired traps is accidentally lost, damaged, or broken and cannot be analyzed, the results of the analysis of the other trap may be used for reporting purposes, provided that:

(a) The other trap has met all of the applicable quality-assurance requirements; and

(b) The Hg concentration measured by the other trap is multiplied by a factor of 1.111.

(9) All unit operating hours for which valid Hg concentration data are obtained with the primary sorbent trap monitoring system (as verified using the quality assurance procedures in OAR 340-228-0627) must be reported

in the quarterly report under OAR 340-228-0637(4). For hours in which data from the primary monitoring system are invalid, the owner or operator may report valid Hg concentration data from a certified redundant backup CEMS or sorbent trap monitoring system or from an applicable reference method under OAR 340-228-0602(33) or 40 CFR 75.22. If no quality-assured Hg concentration is available for a particular hour, the owner or operator must report the appropriate substitute data value in accordance with OAR 340-228-0633.

(10) Initial certification requirements and additional quality-assurance requirements for the sorbent trap monitoring systems are found in OAR 340-228-0627.

(11) Whenever the type of sorbent material used by the traps is changed, the owner or operator must conduct a diagnostic RATA of the modified sorbent trap monitoring system within 720 unit or stack operating hours after the date and hour when the new sorbent material is first used. If the diagnostic RATA is passed, data from the modified system may be reported as quality-assured, back to the date and hour when the new sorbent material was first used. If the RATA is failed, all data from the modified system shall be invalidated, back to the date and hour when the new sorbent material was first used, and data from the system shall remain invalid until a subsequent RATA is passed. If the required RATA is not completed within 720 unit or stack operating hours, but is passed on the first attempt, data from the modified system shall be invalidated beginning with the first operating hour after the 720 unit or stack operating hour window expires and data from the system shall remain invalid until the date and hour of completion of the successful RATA.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0619

### Procedures for Hg Mass Emissions

(1) Use the procedures in this rule to calculate the hourly Hg mass emissions (in pounds) at each monitored location, for the affected unit or group of units that discharge through a common stack.

(a) To determine the hourly Hg mass emissions when using a Hg concentration monitoring system that measures on a wet basis and a flow monitor, use the following equation:

$$Mh = K \times Ch \times Qh \times th$$

Where:

Mh = Hg mass emissions for the hour, rounded off to three decimal places, (pounds).

K = Units conversion constant, 6.236 x 10<sup>-11</sup> lb-m<sup>3</sup>/μg-scf

Ch = Hourly Hg concentration, wet basis, adjusted for bias if the bias-test procedures show that a bias-adjustment factor is necessary, (μg/wscm).

Qh = Hourly stack gas volumetric flow rate, adjusted for bias, where the bias-test procedures show a bias-adjustment factor is necessary, (scfh)

th = Unit or stack operating time, as defined in 40 CFR 72.2, (hr)

(b) To determine the hourly Hg mass emissions when using a Hg concentration monitoring system that measures on a dry basis or a sorbent trap monitoring system and a flow monitor, use the following equation:

$$Mh = K \times Ch \times Qh \times th \times (1 - Bws)$$

Where:

Mh = Hg mass emissions for the hour, rounded off to three decimal places, (pounds).

K = Units conversion constant, 6.236 x 10<sup>-11</sup> lb-m<sup>3</sup>/μg-scf

Ch = Hourly Hg concentration, dry basis, adjusted for bias if the bias-test procedures show that a bias-adjustment factor is necessary, (μg/dscm). For sorbent trap systems, a single value of Ch (i.e., a flow proportional average concentration for the data collection period), is applied to each hour in the data collection period, for a particular pair of traps.

Qh = Hourly stack gas volumetric flow rate, adjusted for bias, where the bias-test procedures show a bias-adjustment factor is necessary, (scfh)

Bws = Moisture fraction of the stack gas, expressed as a decimal (equal to % H<sub>2</sub>O 100)

th = Unit or stack operating time, as defined in 40 CFR 72.2, (hr)

(2) Use equation 1 to this division to calculate quarterly, year-to-date, and 12-month total Hg mass emissions in pounds.

(3) If heat input rate monitoring is required, follow the applicable procedures for heat input apportionment and summation in sections 5.3, 5.6 and 5.7 of appendix F to 40 CFR part 75.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0621

### Initial Certification and Recertification Procedures

(1) The owner or operator of a coal-fired electric generating unit shall be exempt from the initial certification requirements of this rule for a monitoring system under OAR 340-228-0609(1)(a) if the following conditions are met:

(a) The monitoring system has been previously certified; and

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(b) The applicable quality-assurance and quality-control requirements are fully met for the certified monitoring system described in subsection (1)(a) of this rule.

(2) The recertification provisions of this rule shall apply to a monitoring system under OAR 340-228-0609(1)(a) exempt from initial certification requirements under section (1) of this rule.

(3) Initial certification and recertification procedures. Except as provided in section (1) of this rule, the owner or operator of a coal-fired electric generating unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system or sorbent trap monitoring system). The owner or operator must meet any additional requirements for Hg concentration monitoring systems, sorbent trap monitoring systems (as defined in OAR 340-228-0602(36)), flow monitors, CO<sub>2</sub> monitors, O<sub>2</sub> monitors, or moisture monitors, as set forth under OAR 340-228-0613, under the common stack provisions in OAR 340-228-0615. The owner or operator of a unit that qualifies to use an alternative monitoring system must comply with the procedures in section (4) of this rule.

(a) Requirements for initial certification. The owner or operator must ensure that each monitoring system under OAR 340-228-0609(1)(a) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing by the applicable deadline in OAR 340-228-0609(2). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification is required.

(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system or sorbent trap monitoring system that may significantly affect the ability of the system to accurately measure or record the CO<sub>2</sub> concentration, stack gas volumetric flow rate, Hg concentration, Hg mass emissions, percent moisture, or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21, OAR 340-228-0623, or appendix B to 40 CFR part 75, the owner or operator must recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator must recertify each continuous emission monitoring system or sorbent trap monitoring system, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(c) Approval process for initial certification and recertification. Paragraphs (3)(c)(A) through (D) of this rule apply to both initial certification and recertification of a continuous monitoring system under OAR 340-228-0609(1)(a). For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in paragraph (3)(c)(E) of this rule.

(A) Notification of certification. The owner or operator must submit to the Department written notice of the dates of certification testing, in accordance with 40 CFR 75.61.

(B) Certification application. The owner or operator must submit to the Department a certification application for each monitoring system. A complete certification application must include the information specified in 40 CFR 75.63.

(C) Provisional certification date. The provisional certification date for a monitoring system must be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system under paragraph (3)(c)(B) of this rule. Data measured and recorded by the provisionally certified monitoring system will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Department.

(D) Certification application approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (3)(c)(B) of this rule. In the event

the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements and is included in the certification application will be deemed certified for use.

(i) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.

(ii) Incomplete application notice. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the owner or operator must submit the additional information required to complete the certification application. If the owner or operator does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under subparagraph (3)(c)(D)(iii) of this rule. The 120-day review period must not begin before receipt of a complete certification application.

(iii) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements or if the certification application is incomplete and the requirement for disapproval under subparagraph (3)(c)(D)(ii) of this rule is met, then the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system must not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator must follow the procedures for loss of certification in paragraph (3)(c)(E) of this rule for each monitoring system that is disapproved for initial certification.

(iv) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with OAR 340-228-0629(2).

(E) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under subparagraph (3)(c)(D)(iii) of this rule or a notice of disapproval of certification status under subparagraph (3)(c)(D)(iv) of this rule, then:

(i) The owner or operator must substitute the following values, as applicable, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.21(e) and continuing until such time, date, and hour as the continuous emission monitoring system can be adjusted, repaired, or replaced and certification tests successfully completed (or, if the conditional data validation procedures in 40 CFR 75.20(b)(3)(ii) through (ix) are used, until a probationary calibration error test is passed following corrective actions in accordance with 40 CFR 75.20(b)(3)(ii)):

(I) For a disapproved Hg pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75; and

(II) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential O<sub>2</sub> concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR part 75.

(III) For a disapproved sorbent trap monitoring system and disapproved flow monitor, respectively, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), and maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75.

(ii) The owner or operator must submit a notification of certification retest dates as specified in 40 CFR 75.61(a)(1)(ii) and a new certification application in accordance with paragraphs (3)(c)(A) and (B) of this rule.

(iii) The owner or operator must repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(d) For each Hg concentration monitoring system, the owner or operator must perform the following tests for initial certification or recertification of a Hg continuous emission system:

(A) A 7-day calibration error test in accordance with section 6.3 of appendix A to 40 CFR part 75. The owner or operator may perform this test using either NIST-traceable elemental Hg standards, a NIST-traceable source of oxidized Hg, or other NIST-traceable standards subject to the approval of the Department. The calibration error of a Hg concentration monitor must not deviate from the reference value of either the zero or

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upscale calibration gas by more than 5.0 percent of the span value, as calculated using Equation A-5 of appendix A to 40 CFR part 75. Alternatively, if the span value is 10 µg/m<sup>3</sup>, the calibration error test results are also acceptable if the absolute value of the difference between the monitor response value and the reference value, IR–Al in Equation A-5 of appendix A to 40 CFR part 75, is ≤ 1.0 µg/m<sup>3</sup>. If moisture is added to the calibration gas, the added moisture must be accounted for and the dry-basis concentration of the calibration gas must be used to calculate the calibration error.

(B) A linearity check in accordance with section 6.2 of appendix A to 40 CFR part 75. Design and equip each mercury monitor to permit the introduction of known concentrations of elemental Hg and HgCl<sub>2</sub> separately, at a point immediately preceding the sample extraction filtration system, such that the entire measurement system can be checked. If the Hg monitor does not have a converter, the HgCl<sub>2</sub> injection capability is not required. Follow the applicable procedures in section 6.2 of appendix A to 40 CFR part 75 when performing the 3-level system integrity checks described in paragraph (3)(d)(F) of this rule. Perform the linearity check using NIST-traceable elemental Hg standards and the 3-level system integrity checks using NIST-traceable source of oxidized Hg or other NIST-traceable standards subject to the approval of the Department. If moisture is added to the calibration gas during the required linearity checks or system integrity checks, the moisture content of the calibration gas must be accounted for. Under these circumstances, the dry basis concentration of the calibration gas must be used to calculate the linearity error or measurement error (as applicable).

(C) A relative accuracy test audit (RATA) in accordance with section 6.5 of appendix A to 40 CFR part 75 and as follows:

(i) The RATA must be performed on a µg/m<sup>3</sup> basis and while the unit is combusting coal.

(ii) Calculate the relative accuracy, in accordance with section 7.3 or 7.4 of appendix A to 40 CFR part 75, as applicable.

(iii) The relative accuracy shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg concentration during the relative accuracy test audit is less than 5.0 µg/m<sup>3</sup>, the test results are acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0 µg/m<sup>3</sup>, in cases where the relative accuracy specification of 20.0 percent is not achieved.

(iv) For the RATA of a Hg CEMS using the Ontario Hydro Method, or for the RATA of a sorbent trap system (irrespective of the reference method used), the time per run must be long enough to collect a sufficient mass of Hg to analyze. For the RATA of a sorbent trap monitoring system, use the same-size trap that is used for daily operation of the monitoring system. Spike the third section of each sorbent trap with elemental Hg, as described in OAR 340-228-0627(7)(a)(B). Install a new pair of sorbent traps prior to each test run. For each run, the sorbent trap data must be validated according to the quality assurance criteria in OAR 340-228-0627(8).

(v) Use the same basic approach for traverse point selection that is used for other gas monitoring system RATAs, except that the stratification test provisions in sections 8.1.3 through 8.1.3.5 of Method 30A shall apply, rather than the provisions of section 6.5.6.1 through 6.5.6.3 of appendix A to 40 CFR part 75.

(vi) Up to 336 consecutive unit or stack operating hours may be taken to complete the RATA of a Hg monitoring system, when the Ontario Hydro Method or Method 29 is used as the reference method.

(D) A bias test in accordance with section 7.6 of appendix A to 40 CFR part 75 and as follows:

(i) To calculate bias for a Hg monitoring system when using the Ontario Hydro Method or Method 29, “d” is, for each data point, the difference between the average Hg concentration value (in µg/m<sup>3</sup>) from the paired Ontario Hydro or Method 29 sampling trains and the concentration measured by the monitoring system. For sorbent trap systems, use the average Hg concentration measured by the paired traps in calculation of “d”.

(ii) For single-load RATAs of Hg concentration monitoring systems, and sorbent trap monitoring systems, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A-12.

(iii) For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of appendix A to 40 CFR part 75.

(iv) Mercury concentration monitoring systems and sorbent trap monitoring systems shall not be biased low.

(v) For Hg concentration and sorbent trap monitoring systems, where the average Hg concentration during the RATA is < 5.0 µg/dscm, if the monitoring system meets the normal or the alternative relative accuracy specification in subparagraph (3)(d)(C)(iii) of this rule but fails the bias

test, the owner or operator may either use the bias adjustment factor (BAF) calculated from Equation A-12 appendix A to 40 CFR part 75 and in accordance with sections 7.6.4 and 7.6.5 of appendix A to 40 CFR part 75, using the data from the relative accuracy test audits, or may use a default BAF of 1.250 for reporting purposes.

(vi) Use the bias-adjusted values in computing substitution values in the missing data procedure and in reporting the concentration of Hg during the quarter and calendar year. In addition, when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions, use bias-adjusted values for Hg concentration and flow rate in the mass emission calculations and use bias-adjusted Hg concentrations to compute the appropriate substitution values for Hg concentration in the missing data routines.

(E) A cycle time test in accordance with section 6.4 of appendix A to 40 CFR part 75. For Hg monitors, the calibration gas used for this test may either be the elemental or oxidized form of Hg. As an alternative, the reading is considered stable if it changes by no more than 0.5 µg/m<sup>3</sup> for two minutes.

(F) A 3-level system integrity check, using a NIST-traceable source of oxidized Hg, or other NIST-traceable standards subject to the approval of the Department. This test is not required for an Hg monitor that does not have a converter. The system measurement error must not exceed 10.0 percent of the reference value at any of the three gas levels. To calibrate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, i.e., IR–Al in equation A-4 of appendix A to 40 CFR part 75, does not exceed 0.8 µg/m<sup>3</sup>.

(4) Certification/recertification procedures for alternative monitoring systems. The owner or operator of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Department must comply with the applicable notification and application procedures of 40 CFR 75.20(f).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08

### 340-228-0623

#### Quality Assurance and Quality Control Requirements

(1) For units that use continuous emission monitoring systems to account for Hg mass emissions, the owner or operator must meet the applicable quality assurance and quality control requirements in 40 CFR 75.21, appendix B to 40 CFR part 75, and as follows, for the flow monitoring systems, Hg concentration monitoring systems, moisture monitoring systems, and diluent monitors required under OAR 340-228-0613. Units using sorbent trap monitoring systems must meet the applicable quality assurance requirements in OAR 340-228-0617, 340-228-0627, and as follows.

(a) Calibration Error Test. Except as provided in section 2.1.1.2 of appendix B to 40 CFR part 75, perform the daily calibration error test of each Hg monitoring system according to the procedures in OAR 340-228-0621(3)(d)(A). For Hg monitors, the daily assessments may be made using either NIST-traceable elemental Hg standards, a NIST-traceable source of oxidized Hg, or other NIST-traceable standards subject to the approval of the Department.

(b) Data Validation. For a Hg monitor, an out-of-control period occurs when the calibration error exceeds 5.0% of the span value. Notwithstanding, the Hg monitor shall not be considered out-of-control if IR–Al in Equation A-6 of appendix A to 40 CFR part 75 does not exceed 1.0 µg/m<sup>3</sup>.

(c) Linearity Check. Unless a particular monitor (or monitoring range) is exempted under this subsection or under section 6.2 of appendix A to 40 CFR part 75, perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to 40 CFR part 75, for each primary and redundant backup Hg at least once during each QA operating quarter, as defined in 40 CFR 72.2. For Hg monitors, perform the linearity checks using NIST-traceable elemental Hg standards, or other NIST-traceable standards subject to the approval of the Department. Alternatively, the owner or operator may perform 3-level system integrity checks at the same three calibration gas levels (i.e., low, mid, and high), using a NIST-traceable source of oxidized Hg, or other NIST-traceable standards subject to the approval of the Department. If choosing this option, the performance specification in paragraph (1)(i)(B) of this rule must be met at each gas level. For units using both a low and high span value, a linearity check is required only on the range(s) used to record and report emission data during the QA operat-



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ing quarter. Conduct the linearity checks no less than 30 days apart, to the extent practicable.

(d) Standard RATA Frequencies. For each primary and redundant backup Hg concentration monitoring system and each sorbent trap monitoring system, RATAs must be performed annually, i.e., once every four successive QA operating quarters (as defined in 40 CFR 72.2).

(e) RATA Load (or Operating) Levels and Additional RATA Requirements. For Hg concentration monitoring systems and sorbent trap monitoring systems, the required semiannual or annual RATA tests must be done at the load level (or operating level) designated as normal under section 6.5.2.1(d) of appendix A to 40 CFR part 75. If two load levels (or operating levels) are designated as normal, the required RATA(s) may be done at either load level (or operating level).

(f) Data Validation. Each time that a hands-off RATA of a Hg concentration monitoring system or a sorbent trap monitoring system is passed, perform a bias test in accordance with section 7.6.4 of appendix A to 40 CFR part 75. Apply the appropriate bias adjustment factor to the reported Hg data, in accordance with subsection (1)(g) of this rule.

(g) Bias Adjustment Factor. Except as otherwise specified in section 7.6.5 of appendix A to 40 CFR part 75, if an Hg concentration monitoring system or sorbent trap monitoring system fails the bias test, use the bias adjustment factor given in Equations A-11 and A-12 of appendix A to 40 CFR part 75, or a default bias adjustment factor of 1.250, to adjust the monitored data.

(h) Bias Adjusted Values. Use the bias-adjusted values in computing substitution values in the missing data procedure and in reporting the concentration of Hg during the quarter and calendar year. In addition, when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions, use bias-adjusted values for Hg concentration and flow rate in the mass emission calculations and use bias-adjusted Hg concentrations to compute the appropriate substitution values for Hg concentration in the missing data routines.

(i) System Integrity Checks for Hg Monitors. For each Hg concentration monitoring system (except for a Hg monitor that does not have a converter), perform a single-point system integrity check weekly, i.e., at least once every 168 unit or stack operating hours, using a NIST-traceable source of oxidized Hg, or other NIST-traceable standards subject to the approval of the Department. Perform this check as follows using a mid- or high-level gas concentration, as defined in section 5.2 of appendix A to 40 CFR part 75.

(A) The performance specification in paragraph (1)(i)(B) must be met, otherwise the monitoring system is considered out-of-control, from the hour of the failed check until a subsequent system integrity check is passed. If a required system integrity check is not performed and passed within 168 unit or stack operating hours of last successful check, the monitoring system shall also be considered out of control, beginning with the 169th unit of stack operating hour after the last successful check, and continuing until a subsequent system integrity check is passed. This weekly check is not required if the daily calibration assessments in subsection (1)(a) of this rule are performed using a NIST-traceable source of oxidized Hg, or other NIST-traceable standards subject to the approval of the Department.

(B) The measurement error for the linearity check must not exceed 10.0 percent of the reference value at any of the three gas levels. To calibrate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, i.e.,  $|R-A|$  in equation A-4 of appendix A to 40 CFR part 75, does not exceed  $0.8 \mu\text{g}/\text{m}^3$ .

(2) Missing data procedures. Except as provided in OAR 340-228-0617(11) and 340-228-0631(2), the owner or operator must provide substitute data from monitoring systems required under OAR 340-228-0613 for each affected unit as follows:

(a) For an owner or operator using an Hg concentration monitoring system, substitute for missing data in accordance with the applicable missing data procedures in 40 CFR 75.31 through 75.37 and OAR 340-228-0631 and 0633 whenever the unit combusts fuel and:

(A) A valid, quality-assured hour of Hg concentration data (in  $\mu\text{g}/\text{m}^3$ ) has not been measured and recorded, either by a certified Hg concentration monitoring system, by an appropriate reference method under OAR 340-228-0602(33) or 40 CFR 75.22, or by an approved alternative monitoring method under 40 CFR part 75 subpart E; or

(B) A valid, quality-assured hour of flow rate data (in scfh) has not been measured and recorded for a unit either by a certified flow monitor, by

an appropriate EPA reference method under 40 CFR 75.22, or by an approved alternative monitoring system under 40 CFR part 75 subpart E; or

(C) A valid, quality-assured hour of moisture data (in percent  $\text{H}_2\text{O}$ ) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system, by an appropriate EPA reference method under 40 CFR 75.22, or an approved alternative monitoring method under 40 CFR part 75 subpart E. This requirement does not apply when a default percent moisture value, as provided in 40 CFR 75.11(b), is used to account for the hourly moisture content of the stack gas, or when correction of the Hg concentration for moisture is not necessary; or

(D) A valid, quality-assured hour of heat input rate data (in  $\text{MMBtu}/\text{hr}$ ) has not been measured and recorded for a unit, either by certified flow rate and diluent ( $\text{CO}_2$  or  $\text{O}_2$ ) monitors, by appropriate EPA reference methods under 40 CFR 75.22, or by approved alternative monitoring systems under 40 CFR part 75 subpart E.

(b) For an owner or operator using a sorbent trap monitoring system to quantify Hg mass emissions, substitute for missing data in accordance with the missing data procedures in OAR 340-228-0633.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-228-0625

#### Specifications and Test Procedures for Total Vapor Phase Mercury CEMS

(1) Analyte. Mercury (Hg), CAS No. 7439-97-6.

(2) Applicability.

(a) This specification is for evaluating the acceptability of total vapor phase Hg CEMS installed on the exit gases from fossil fuel fired boilers at the time of or soon after installation and whenever specified in the regulations. The Hg CEMS must be capable of measuring the total concentration in  $\mu\text{g}/\text{m}^3$  (regardless of speciation) of vapor phase Hg, and recording that concentration on a wet or dry basis.

(b) Particle bound Hg is not included in the measurements.

(c) This specification is not designed to evaluate an installed CEMS's performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS's performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS properly.

(d) The Department may require the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance.

(e) The owner or operator must conduct the performance evaluation of the Hg CEMS according to OAR 340-228-0621(3)(d) and the following procedures:

(3) Summary of Performance Specification. Procedures for measuring CEMS relative accuracy, measurement error and drift are outlined. CEMS installation and measurement location specifications, and data reduction procedures are included. Conformance of the CEMS with the Performance Specification is determined.

(4) Definitions.

(a) "Continuous Emission Monitoring System (CEMS)" means the total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:

(A) "Sample Interface" means that portion of the CEMS used for one or more of the following: sample acquisition, sample transport, sample conditioning, and protection of the monitor from the effects of the stack effluent.

(B) "Hg Analyzer" means that portion of the Hg CEMS that measures the total vapor phase Hg mass concentration and generates a proportional output.

(C) "Data Recorder" means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

(b) "Span Value" means the upper limit of the intended Hg concentration measurement range. The span value is a value equal to two times the emission standard. Alternatively, the Hg span value(s) may be determined as follows:

(A) For each Hg monitor, determine a high span value, by rounding the maximum potential Hg concentration value from OAR 340-228-0602(25) upward to the next highest multiple of  $10 \mu\text{g}/\text{m}^3$ .

(B) For an affected unit equipped with an FGD system or a unit with add-on Hg emission controls, if the maximum expected Hg concentration value from OAR 340-228-0602(24) is less than 20 percent of the high span value from paragraph (4)(b)(A) of this rule, and if the high span value is  $20 \mu\text{g}/\text{m}^3$  or greater, define a second, low span value of  $10 \mu\text{g}/\text{m}^3$ .

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(C) If only a high span value is required, set the full-scale range of the Hg analyzer to be greater than or equal to the span value.

(D) If two span values are required, the owner or operator may either:

(i) Use two separate (high and low) measurement scales, setting the range of each scale to be greater than or equal to the high or low span value, as appropriate; or

(ii) Quality-assure two segments of a single measurement scale.

(c) "Measurement Error (ME)" means the absolute value of the difference between the concentration indicated by the Hg analyzer and the known concentration generated by a reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged. An ME test procedure is performed to document the accuracy and linearity of the Hg CEMS at several points over the measurement range.

(d) "Upscale Drift (UD)" means the absolute value of the difference between the CEMS output response and an upscale Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

(e) "Zero Drift (ZD)" means the absolute value of the difference between the CEMS output response and a zero-level Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

(f) "Relative Accuracy (RA)" means the absolute mean difference between the pollutant concentration(s) determined by the CEMS and the value determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for low concentration sources, the RA may be expressed as the absolute value of the difference between the mean CEMS and RM values.

(5) Safety. The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the RM should be consulted for specific precautions to be taken.

(6) Equipment and Supplies.

(a) CEMS Equipment Specifications.

(A) Data Recorder Scale. The Hg CEMS data recorder output range must include zero and a high level value. The high level value must be approximately two times the Hg concentration corresponding to the emission standard level for the stack gas under the circumstances existing as the stack gas is sampled. A lower high level value may be used, provided that the measured values do not exceed 95 percent of the high level value. Alternatively, the owner or operator may set the full-scale range(s) of the Hg analyzer according to subsection (4)(b) of this rule.

(B) The CEMS design should also provide for the determination of calibration drift at a zero value (zero to 20 percent of the span value) and at an upscale value (between 50 and 100 percent of the high-level value).

(b) Reference Gas Delivery System. The reference gas delivery system must be designed so that the flowrate of reference gas introduced to the CEMS is the same at all three challenge levels specified in subsection (7)(a) of this rule and at all times exceeds the flow requirements of the CEMS.

(c) Other equipment and supplies, as needed by the applicable reference method used. See paragraph (8)(f)(B) of this rule.

(7) Reagents and Standards.

(a) Reference Gases. Reference gas standards are required for both elemental and oxidized Hg (Hg and mercuric chloride, HgCl<sub>2</sub>). The use of National Institute of Standards and Technology (NIST)-certified or NIST-traceable standards and reagents is required. The following gas concentrations are required.

(A) Zero-level. 0 to 20 percent of the span value.

(B) Mid-level. 50 to 60 percent of the span value.

(C) High-level. 80 to 100 percent of the span value.

(b) Reference gas standards may also be required for the reference methods. See paragraph (8)(f)(B) of this rule.

(8) Performance Specification (PS) Test Procedure.

(a) Installation and Measurement Location Specifications.

(A) CEMS Installation. Install the CEMS at an accessible location downstream of all pollution control equipment. Since the Hg CEMS sam-

ple system normally extracts gas from a single point in the stack, use a location that has been shown to be free of stratification for SO<sub>2</sub> and NO<sub>x</sub> through concentration measurement traverses for those gases. If the cause of failure to meet the RA test requirement is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated. Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

(B) Measurement Location. The measurement location should be (1) at least two equivalent diameters downstream of the nearest control device, point of pollutant generation or other point at which a change of pollutant concentration may occur, and (2) at least half an equivalent diameter upstream from the effluent exhaust. The equivalent duct diameter is calculated as per appendix A to 40 CFR part 60, Method 1.

(C) Hg CEMS Sample Extraction Point. Use a sample extraction point (1) no less than 1.0 meter from the stack or duct wall, or (2) within the centroidal velocity traverse area of the stack or duct cross section.

(b) RM Measurement Location and Traverse Points. Refer to PS 2 of appendix B to 40 CFR part 60. The RM and CEMS locations need not be immediately adjacent.

(c) ME Test Procedure. The Hg CEMS must be constructed to permit the introduction of known concentrations of Hg and HgCl<sub>2</sub> separately into the sampling system of the CEMS immediately preceding the sample extraction filtration system such that the entire CEMS can be challenged. Sequentially inject each of the three reference gases (zero, mid-level, and high level) for each Hg species. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value. For each reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

(d) UD Test Procedure.

(A) UD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the UD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in paragraphs (8)(d)(B) through (C) of this rule. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either Hg<sub>0</sub> or HgCl<sub>2</sub> standards for this test.

(B) The purpose of the UD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the UD test immediately before these adjustments, or conduct it in such a way that the UD can be determined.

(C) Conduct the UD test at either the mid-level or high-level point specified in subsection (7)(a) of this rule. Introduce the reference gas to the CEMS. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value. For the reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

(e) ZD Test Procedure.

(A) ZD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the ZD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in paragraphs (8)(e)(B) through (C) of this rule. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either nitrogen, air, Hg<sub>0</sub>, or HgCl<sub>2</sub> standards for this test.

(B) The purpose of the ZD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the ZD test immediately before these adjustments, or conduct it in such a way that the ZD can be determined.

(C) Conduct the ZD test at the zero level specified in subsection (7)(a) of this rule. Introduce the zero gas to the CEMS. Record the CEMS response and subtract the zero value from the CEMS value and express the absolute value of the difference as a percentage of the span value. For the zero gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

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(f) RA Test Procedure.

(A) RA Test Period. Conduct the RA test according to the procedure given in paragraphs (8)(f)(B) through (F) of this rule while the affected facility is operating at normal full load, or as specified in an applicable subpart. The RA test may be conducted during the ZD and UD test period.

(B) RM. Use one of the reference methods specified in OAR 340-228-0602(33). Do not include the filterable portion of the sample when making comparisons to the CEMS results. When Method 29 or ASTM D6784-02 is used, conduct the RM test runs with paired or duplicate sampling systems. When an approved instrumental method is used, paired sampling systems are not required. If the RM and CEMS measure on a different moisture basis, data derived with Method 4 in appendix A to 40 CFR part 60 must also be obtained during the RA test.

(C) Sampling Strategy for RM Tests. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data. It is preferable to conduct moisture measurements (if needed) and Hg measurements simultaneously, although moisture measurements that are taken within an hour of the Hg measurements may be used to adjust the Hg concentrations to a consistent moisture basis. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period for each paired RM run (including the exact time of day) on the CEMS chart recordings or other permanent record of output.

(D) Number and length of RM Tests. Conduct a minimum of nine RM test runs. When Method 29 or ASTM D6784-02 is used, only test runs for which the data from the paired RM trains meet the relative deviation (RD) criteria of this PS must be used in the RA calculations. In addition, for Method 29 and ASTM D 6784-02, use a minimum sample run time of 2 hours. Note: More than nine sets of RM tests may be performed. If this option is chosen, paired RM test results may be excluded so long as the total number of paired RM test results used to determine the CEMS RA is greater than or equal to nine. However, all data must be reported, including the excluded data.

(E) Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the results are on a consistent moisture basis with the RM test. Then, compare each integrated CEMS value against the corresponding RM value. When Method 29 or ASTM D6784-02 is used, compare each CEMS value against the corresponding average of the paired RM values.

(F) Paired RM Outliers.

(i) When Method 29 or ASTM D6784-02 is used, outliers are identified through the determination of relative deviation (RD) of the paired RM tests. Data that do not meet this criteria should be flagged as a data quality problem. The primary reason for performing paired RM sampling is to ensure the quality of the RM data. The percent RD of paired data is the parameter used to quantify data quality. Determine RD for two paired data points as follows:

$$RD = 100 \times |(Ca - Cb)| / (Ca + Cb)$$

where Ca and Cb are concentration values determined from each of the two samples respectively.

(ii) A minimum performance criteria for RM Hg data is that RD for any data pair must be  $\leq 10$  percent as long as the mean Hg concentration is greater than  $1.0 \mu\text{g}/\text{m}^3$ . If the mean Hg concentration is less than or equal to  $1.0 \mu\text{g}/\text{m}^3$ , the RD must be  $\leq 20$  percent. Pairs of RM data exceeding these RD criteria should be eliminated from the data set used to develop a Hg CEMS correlation or to assess CEMS RA.

(G) Calculate the mean difference between the RM and CEMS values in the units of micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), the standard deviation, the confidence coefficient, and the RA according to the procedures in section (10) of this rule.

(g) Reporting. At a minimum (check with the Department for additional requirements, if any), summarize in tabular form the results of the RD tests and the RA tests or alternative RA procedure, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), reference gas concentration certifications, and any other information necessary to confirm that the performance of the CEMS meets the performance criteria.

(9) Analytical Procedure. Sample collection and analysis are concurrent for this PS (see section (8) of this rule). Refer to the RM employed for specific analytical procedures.

(10) Calculations and Data Analysis. Summarize the results on a data sheet similar to that shown in Figure 2-2 for PS 2.

(a) Consistent Basis. All data from the RM and CEMS must be compared in units of  $\mu\text{g}/\text{m}^3$ , on a consistent and identified moisture and volumetric basis (STP = 20°C, 760 millimeters (mm) Hg).

(b) Moisture Correction (as applicable). If the RM and CEMS measure Hg on a different moisture basis, using the following equation to make the appropriate corrections to the Hg concentrations.

$$\text{Concentration(dry)} = \text{Concentration(wet)} / (1 - Bws)$$

In the above equation, Bws is the moisture content of the flue gas from Method 4, expressed as a decimal fraction (e.g., for 8.0 percent H<sub>2</sub>O, Bws = 0.08).

(c) Arithmetic Mean. Calculate the arithmetic mean of the difference, d, of a data set using equation 2 to this division.

(d) Standard Deviation. Calculate the standard deviation, Sd, using equation 3 to this division.

(e) Confidence Coefficient (CC). Calculate the 2.5 percent error confidence coefficient (one-tailed), CC, using equation 4 to this division.

(f) RA. Calculate the RA of a set of data using equation 5 to this division.

(11) Performance Specifications.

(a) ME. ME is assessed at zero-level, mid-level and high-level values as given below using standards for both Hg<sub>0</sub> and HgCl<sub>2</sub>. The mean difference between the indicated CEMS concentration and the reference concentration value for each standard must be no greater than 5 percent of the span value.

(b) UD. The UD must not exceed 5 percent of the span value on any of the 7 days of the UD test.

(c) ZD. The ZD must not exceed 5 percent of the span value on any of the 7 days of the ZD test.

(d) RA. The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of  $\mu\text{g}/\text{m}^3$ . Alternatively, if the mean RM is less than  $5.0 \mu\text{g}/\text{m}^3$ , the results are acceptable if the absolute value of the difference between the mean RM and CEMS values does not exceed  $1.0 \mu\text{g}/\text{m}^3$ .

(12) Bibliography.

(a) 40 CFR part 60, appendix B, "Performance Specification 2—Specifications and Test Procedures for SO<sub>2</sub> and NO<sub>x</sub> Continuous Emission Monitoring Systems in Stationary Sources."

(b) 40 CFR part 60, appendix A, "Method 29 — Determination of Metals Emissions from Stationary Sources."

(c) ASTM Method D6784-02, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)."

(13) The following values are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

(a) For n = 2, t<sub>0.975</sub> = 12.706.

(b) For n = 3, t<sub>0.975</sub> = 4.303.

(c) For n = 4, t<sub>0.975</sub> = 3.182.

(d) For n = 5, t<sub>0.975</sub> = 2.776.

(e) For n = 6, t<sub>0.975</sub> = 2.571.

(f) For n = 7, t<sub>0.975</sub> = 2.447.

(g) For n = 8, t<sub>0.975</sub> = 2.365.

(h) For n = 9, t<sub>0.975</sub> = 2.306.

(i) For n = 10, t<sub>0.975</sub> = 2.262.

(j) For n = 11, t<sub>0.975</sub> = 2.228.

(k) For n = 12, t<sub>0.975</sub> = 2.201.

(l) For n = 13, t<sub>0.975</sub> = 2.179.

(m) For n = 14, t<sub>0.975</sub> = 2.160.

(n) For n = 15, t<sub>0.975</sub> = 2.145.

(o) For n = 16, t<sub>0.975</sub> = 2.131.

Stat. Auth.: ORS 468.020 & 468A.310

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## 340-228-0627

### Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems

(1) Scope and Application. This rule specifies sampling, and analytical, and quality-assurance criteria and procedures for the performance-based monitoring of vapor-phase mercury (Hg) emissions in combustion flue gas streams, using a sorbent trap monitoring system (as defined in OAR 340-228-0602). The principle employed is continuous sampling using in-stack sorbent media coupled with analysis of the integrated samples. The performance-based approach of this rule allows for use of various suitable sampling and analytical technologies while maintaining a specified and documented level of data quality through performance criteria. Persons using this rule should have a thorough working knowledge of Methods 1, 2, 3, 4 and 5 in appendices A-1 through A-3 to 40 CFR part 60, as well as the determinative technique selected for analysis.



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(a) Analytes. The analyte measured by these procedures and specifications is total vapor-phase Hg in the flue gas, which represents the sum of elemental Hg (Hg<sub>0</sub>, CAS Number 7439-97-6) and oxidized forms of Hg, in mass concentration units of micrograms per dry standard cubic meter (µg/dscm).

(b) Applicability. These performance criteria and procedures are applicable to monitoring of vapor-phase Hg emissions under relatively low-dust conditions (i.e., sampling in the stack after all pollution control devices), from coal-fired electric utility steam generators. Individual sample collection times can range from 30 minutes to several days in duration, depending on the Hg concentration in the stack. The monitoring system must achieve the performance criteria specified in section (8) of this rule and the sorbent media capture ability must not be exceeded. The sampling rate must be maintained at a constant proportion to the total stack flowrate to ensure representativeness of the sample collected. Failure to achieve certain performance criteria will result in invalid Hg emissions monitoring data.

(2) Principle. Known volumes of flue gas are extracted from a stack or duct through paired, in-stack, pre-spiked sorbent media traps at an appropriate nominal flow rate. Collection of Hg on the sorbent media in the stack mitigates potential loss of Hg during transport through a probe/sample line. Paired train sampling is required to determine measurement precision and verify acceptability of the measured emissions data. The sorbent traps are recovered from the sampling system, prepared for analysis, as needed, and analyzed by any suitable determinative technique that can meet the performance criteria. A section of each sorbent trap is spiked with Hg<sub>0</sub> prior to sampling. This section is analyzed separately and the recovery value is used to correct the individual Hg sample for measurement bias.

(3) Clean Handling and Contamination. To avoid Hg contamination of the samples, special attention should be paid to cleanliness during transport, field handling, sampling, recovery, and laboratory analysis, as well as during preparation of the sorbent cartridges. Collection and analysis of blank samples (field, trip, lab) is useful in verifying the absence of contaminant Hg.

(4) Safety.

(a) Site hazards. Site hazards must be thoroughly considered in advance of applying these procedures/specifications in the field; advance coordination with the site is critical to understand the conditions and applicable safety policies. At a minimum, portions of the sampling system will be hot, requiring appropriate gloves, long sleeves, and caution in handling this equipment.

(b) Laboratory safety policies. Laboratory safety policies should be in place to minimize risk of chemical exposure and to properly handle waste disposal. Personnel must wear appropriate laboratory attire according to a Chemical Hygiene Plan established by the laboratory.

(c) Toxicity or carcinogenicity. The toxicity or carcinogenicity of any reagents used must be considered. Depending upon the sampling and analytical technologies selected, this measurement may involve hazardous materials, operations, and equipment and this rule does not address all of the safety problems associated with implementing this approach. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performance. Any chemical should be regarded as a potential health hazard and exposure to these compounds should be minimized. Chemists should refer to the Material Safety Data Sheet (MSDS) for each chemical used.

(d) Wastes. Any wastes generated by this procedure must be disposed of according to a hazardous materials management plan that details and tracks various waste streams and disposal procedures.

(5) Equipment and Supplies. The following list is presented as an example of key equipment and supplies likely required to perform vapor-phase Hg monitoring using a sorbent trap monitoring system. It is recognized that additional equipment and supplies may be needed. Collection of paired samples is required. Also required are a certified stack gas volumetric flow monitor that meets the requirements of 40 CFR 75.10 and an acceptable means of correcting for the stack gas moisture content, i.e., either by using data from a certified continuous moisture monitoring system or by using an approved default moisture value (see 40 CFR 75.11(b)).

(a) Sorbent Trap Monitoring System. The monitoring system must include the following components:

(A) Sorbent Traps. The sorbent media used to collect Hg must be configured in a trap with three distinct and identical segments or sections, connected in series, that are amenable to separate analyses. Section 1 is designated for primary capture of gaseous Hg. Section 2 is designated as a back-up section for determination of vapor-phase Hg breakthrough. Section 3 is designated for QA/QC purposes where this section must be spiked with a

known amount of gaseous Hg<sub>0</sub> prior to sampling and later analyzed to determine recovery efficiency. The sorbent media may be any collection material (e.g., carbon, chemically-treated filter, etc.) capable of quantitatively capturing and recovering for subsequent analysis, all gaseous forms of Hg for the intended application. Selection of the sorbent media must be based on the material's ability to achieve the performance criteria contained in section (8) of this rule as well as the sorbent's vapor phase Hg capture efficiency for the emissions matrix and the expected sampling duration at the test site. The sorbent media must be obtained from a source that can demonstrate the quality assurance and control necessary to ensure consistent reliability. The paired sorbent traps are supported on a probe (or probes) and inserted directly into the flue gas stream.

(B) Sampling Probe Assembly. Each probe assembly must have a leak-free attachment to the sorbent trap(s). Each sorbent trap must be mounted at the entrance of or within the probe such that the gas sampled enters the trap directly. Each probe/sorbent trap assembly must be heated to a temperature sufficient to prevent liquid condensation in the sorbent trap(s). Auxiliary heating is required only where the stack temperature is too low to prevent condensation. Use a calibrated thermocouple to monitor the stack temperature. A single probe capable of operating the paired sorbent traps may be used. Alternatively, individual probe/sorbent trap assemblies may be used, provided that the individual sorbent traps are co-located to ensure representative Hg monitoring and are sufficiently separated to prevent aerodynamic interference.

(C) Moisture Removal Device. A robust moisture removal device or system, suitable for continuous duty (such as a Peltier cooler), must be used to remove water vapor from the gas stream prior to entering the dry gas meter.

(D) Vacuum Pump. Use a leak-tight, vacuum pump capable of operating within the candidate system's flow range.

(E) Dry Gas Meter. A dry gas meter must be used to determine total sample volume. The meter must be sufficiently accurate to measure the total sample volume within 2 percent, must be calibrated at the selected flow rate and conditions actually encountered during sampling, and must be equipped with a temperature sensor capable of measuring typical meter temperatures accurately to within 30C for correcting final sample volume.

(F) Sample Flow Rate Meter and Controller. Use a flow rate indicator and controller for maintaining necessary sampling flow rates.

(G) Temperature Sensor. Same as Section 6.1.1.7 of Method 5 in appendix A-3 to 40 CFR part 60.

(H) Barometer. Same as Section 6.1.2 of Method 5 in appendix A-3 to 40 CFR part 60.

(I) Data Logger (Optional). Device for recording associated and necessary ancillary information (e.g., temperatures, pressures, flow, time, etc.).

(b) Gaseous Hg<sub>0</sub> Sorbent Trap Spiking System. A known mass of gaseous Hg<sub>0</sub> must be spiked onto section 3 of each sorbent trap prior to sampling. Any approach capable of quantitatively delivering known masses of Hg<sub>0</sub> onto sorbent traps is acceptable. Several technologies or devices are available to meet this objective. Their practicality is a function of Hg mass spike levels. For low levels, NIST-certified or NIST-traceable gas generators or tanks may be suitable, but will likely require long preparation times. A more practical, alternative system, capable of delivering almost any mass required, makes use of NIST-certified or NIST-traceable Hg salt solutions (e.g., Hg(NO<sub>3</sub>)<sub>2</sub>). With this system, an aliquot of known volume and concentration is added to a reaction vessel containing a reducing agent (e.g., stannous chloride); the Hg salt solution is reduced to Hg<sub>0</sub> and purged onto section 3 of the sorbent trap using an impinger sparging system.

(c) Sample Analysis Equipment. Any analytical system capable of quantitatively recovering and quantifying total gaseous Hg from sorbent media is acceptable provided that the analysis can meet the performance criteria in section (8) of this rule. Candidate recovery techniques include leaching, digestion, and thermal desorption. Candidate analytical techniques include ultraviolet atomic fluorescence (UV AF); ultraviolet atomic absorption (UV AA), with and without gold trapping; and in situ X-ray fluorescence (XRF) analysis.

(6) Reagents and Standards. Only NIST-certified or NIST-traceable calibration gas standards and reagents must be used for the tests and procedures required under this rule.

(7) Sample Collection and Transport.

(a) Pre-Test Procedures.

(A) Selection of Sampling Site. Sampling site information should be obtained in accordance with Method 1 in appendix A-1 to 40 CFR part 60. Identify a monitoring location representative of source Hg emissions. Locations shown to be free of stratification through measurement traverses for gases such as SO<sub>2</sub> and NO<sub>x</sub> may be one such approach. An estimation

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of the expected stack Hg concentration is required to establish a target sample flow rate, total gas sample volume, and the mass of Hg0 to be spiked onto section 3 of each sorbent trap.

(B) Pre-Sampling Spiking of Sorbent Traps. Based on the estimated Hg concentration in the stack, the target sample rate and the target sampling duration, calculate the expected mass loading for section 1 of each sorbent trap (for an example calculation, see subsection (12)(a) of this rule). The pre-sampling spike to be added to section 3 of each sorbent trap must be within + 50 percent of the expected section 1 mass loading. Spike section 3 of each sorbent trap at this level, as described in subsection (5)(b) of this rule. For each sorbent trap, keep an official record of the mass of Hg0 added to section 3. This record must include, at a minimum, the ID number of the trap, the date and time of the spike, the name of the analyst performing the procedure, the mass of Hg0 added to section 3 of the trap ( $\mu\text{g}$ ), and the supporting calculations. This record must be maintained in a format suitable for inspection and audit and must be made available to the regulatory agencies upon request.

(C) Pre-test Leak Check. Perform a leak check with the sorbent traps in place. Draw a vacuum in each sample train. Adjust the vacuum in the sample train to +15 $\square$  Hg. Using the dry gas meter, determine leak rate. The leakage rate must not exceed 4 percent of the target sampling rate. Once the leak check passes this criterion, carefully release the vacuum in the sample train then seal the sorbent trap inlet until the probe is ready for insertion into the stack or duct.

(D) Determination of Flue Gas Characteristics. Determine or measure the flue gas measurement environment characteristics (gas temperature, static pressure, gas velocity, stack moisture, etc.) in order to determine ancillary requirements such as probe heating requirements (if any), initial sample rate, proportional sampling conditions, moisture management, etc.

(b) Sample Collection.

(A) Remove the plug from the end of each sorbent trap and store each plug in a clean sorbent trap storage container. Remove the stack or duct port cap and insert the probe(s). Secure the probe(s) and ensure that no leakage occurs between the duct and environment.

(B) Record initial data including the sorbent trap ID, start time, starting dry gas meter readings, initial temperatures, setpoints, and any other appropriate information.

(C) Flow Rate Control. Set the initial sample flow rate at the target value from paragraph (7)(a)(A) of this rule. Record the initial dry gas meter reading, stack temperature, meter temperatures, etc. Then, for every operating hour during the sampling period, record the date and time, the sample flow rate, the gas meter reading, the stack temperature, the flow meter temperatures, temperatures of heated equipment such as the vacuum lines and the probes (if heated), and the sampling system vacuum readings. Also record the stack gas flow rate, as measured by the certified flow monitor, and the ratio of the stack gas flow rate to the sample flow rate. Adjust the sampling flow rate to maintain proportional sampling, i.e., keep the ratio of the stack gas flow rate to sample flow rate constant, to within + 25 percent of the reference ratio from the first hour of the data collection period (see section (11) of this rule). The sample flow rate through a sorbent trap monitoring system during any hour (or portion of an hour) in which the unit is not operating shall be zero.

(D) Stack Gas Moisture Determination. Determine stack gas moisture using a continuous moisture monitoring system, as described in 40 CFR 75.11(b). Alternatively, the owner or operator may use the appropriate fuel-specific moisture default value provided in 40 CFR 75.11, or a site specific moisture default value approved by petition under 40 CFR 75.66.

(E) Essential Operating Data. Obtain and record any essential operating data for the facility during the test period, e.g., the barometric pressure must be obtained for correcting sample volume to standard conditions. At the end of the data collection period, record the final dry gas meter reading and the final values of all other essential parameters.

(F) Post Test Leak Check. When sampling is completed, turn off the sample pump, remove the probe/sorbent trap from the port and carefully re-plug the end of each sorbent trap. Perform a leak check with the sorbent traps in place, at the maximum vacuum reached during the sampling period. Use the same general approach described in paragraph (7)(a)(C) of this rule. Record the leakage rate and vacuum. The leakage rate must not exceed 4 percent of the average sampling rate for the data collection period. Following the leak check, carefully release the vacuum in the sample train.

(G) Sample Recovery. Recover each sampled sorbent trap by removing it from the probe, sealing both ends. Wipe any deposited material from the outside of the sorbent trap. Place the sorbent trap into an appropriate sample storage container and store/preserve in appropriate manner.

(H) Sample Preservation, Storage, and Transport. While the performance criteria of this approach provide for verification of appropriate sample handling, it is still important that the user consider, determine, and plan for suitable sample preservation, storage, transport, and holding times for these measurements. Therefore, procedures in ASTM D6911-03 "Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis" must be followed for all samples.

(I) Sample Custody. Proper procedures and documentation for sample chain of custody are critical to ensuring data integrity. The chain of custody procedures in ASTM D4840-99 (reapproved 2004) "Standard Guide for Sample Chain-of-Custody Procedures" must be followed for all samples (including field samples and blanks).

(8) Quality Assurance and Quality Control. The owner and operator using a sorbent trap monitoring system must develop and implement a quality assurance/quality control (QA/QC) program. At a minimum, include in each QA/QC program a written plan that describes in detail (or that refers to separate documents containing) complete, step-by-step procedures and operations. Upon request from the Department, the owner or operator must make all procedures, maintenance records, and ancillary supporting documentation from the manufacturer (e.g., software coefficients and troubleshooting diagrams) available for review during an audit. Electronic storage of the information in the QA/QC plan is permissible, provided that the information can be made available in hardcopy upon request during an audit. Table 2 to this division summarizes the QA/QC performance criteria that are used to validate the Hg emissions data from sorbent trap monitoring systems, including the relative accuracy test audit (RATA) requirement (see section 6.5.7 of appendix A to 40 CFR part 75 and section 2.3 of appendix B to 40 CFR part 75, except that for sorbent trap monitoring systems, RATAs must be performed annually, i.e., once every four successive QA operating quarters). The RATA must meet the requirements in OAR 340-228-0621(3)(d)(C)(iii). Except as provided in OAR 340-228-0617(8) and as otherwise indicated in Table 2 to this division, failure to achieve these performance criteria will result in invalidation of Hg emissions data.

(9) Quality Assurance and Quality Control Plan Content. In addition to section 1 of Appendix B to 40 CFR part 75, the QA/QC plan must contain the following:

(a) Sorbent Trap Identification and Tracking. Include procedures for inscribing or otherwise permanently marking a unique identification number on each sorbent trap, for tracking purposes. Keep records of the ID of the monitoring system in which each sorbent trap is used, and the dates and hours of each Hg collection period.

(b) Monitoring System Integrity and Data Quality. Explain the procedures used to perform the leak checks when a sorbent trap is placed in service and removed from service. Also explain the other QA procedures used to ensure system integrity and data quality, including, but not limited to, dry gas meter calibrations, verification of moisture removal, and ensuring airtight pump operation. In addition, the QA plan must include the data acceptance and quality control criteria in section (8) of this rule.

(c) Hg Analysis. Explain the chain of custody employed in packing, transporting, and analyzing the sorbent traps (see paragraphs (7)(b)(H) and (I) of this rule). Keep records of all Hg analyses. The analyses must be performed in accordance with the procedures described in section (11) of this rule.

(d) Laboratory Certification. The QA Plan must include documentation that the laboratory performing the analyses on the carbon sorbent traps is certified by the International Organization for Standardization (ISO) to have a proficiency that meets the requirements of ISO 17025. Alternatively, if the laboratory performs the spike recovery study described in subsection (11)(c) of this rule and repeats that procedure annually, ISO certification is not required.

(10) Calibration and Standardization.

(a) Only NIST-certified and NIST-traceable calibration standards (i.e., calibration gases, solutions, etc.) must be used for the spiking and analytical procedures in this rule.

(b) Dry Gas Meter Calibration. Prior to its initial use, perform a full calibration of the metering system at three orifice settings to determine the average dry gas meter coefficient (Y), as described in section 10.3.1 of Method 5 in appendix A-3 to 40 CFR part 60. Thereafter, recalibrate the metering system quarterly at one intermediate orifice setting, as described in section 10.3.2 of Method 5 in appendix A-3 to 40 CFR part 60. If a quarterly recalibration shows that the value of Y has changed by more than 5 percent, repeat the full calibration of the metering system to determine a new value of Y.

(c) Thermocouples and Other Temperature Sensors. Use the procedures and criteria in section 10.3 of Method 2 in appendix A-1 to 40 CFR

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part 60 to calibrate in-stack temperature sensors and thermocouples. Dial thermometers must be calibrated against mercury-in-glass thermometers. Calibrations must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute temperature measured by the temperature sensor must agree to within + 1.5 percent of the temperature measured with the reference sensor, otherwise the sensor may not continue to be used.

(d) Barometer. Calibrate against a mercury barometer. Calibration must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute pressure measured by the barometer must agree to within + 10 mm Hg of the pressure measured by the mercury barometer, otherwise the barometer may not continue to be used.

(e) Other Sensors and Gauges. Calibrate all other sensors and gauges according to the procedures specified by the instrument manufacturer(s).

(f) Analytical System Calibration. See subsection (10)(a) of this rule.

(11) Analytical Procedures. The analysis of the Hg samples may be conducted using any instrument or technology capable of quantifying total Hg from the sorbent media and meeting the performance criteria in section (8) of this rule.

(a) Analyzer System Calibration. Perform a multipoint calibration of the analyzer at three or more upscale points over the desired quantitative range (multiple calibration ranges must be calibrated, if necessary). The field samples analyzed must fall within a calibrated, quantitative range and meet the necessary performance criteria. For samples that are suitable for aliquotting, a series of dilutions may be needed to ensure that the samples fall within a calibrated range. However, for sorbent media samples that are consumed during analysis (e.g., thermal desorption techniques), extra care must be taken to ensure that the analytical system is appropriately calibrated prior to sample analysis. The calibration curve range(s) should be determined based on the anticipated level of Hg mass on the sorbent media. Knowledge of estimated stack Hg concentrations and total sample volume may be required prior to analysis. The calibration curve for use with the various analytical techniques (e.g., UV AA, UV AF, and XRF) can be generated by directly introducing standard solutions into the analyzer or by spiking the standards onto the sorbent media and then introducing into the analyzer after preparing the sorbent/standard according to the particular analytical technique. For each calibration curve, the value of the square of the linear correlation coefficient, i.e.,  $r^2$ , must be  $\geq 0.99$ , and the analyzer response must be within + 10 percent of reference value at each upscale calibration point. Calibrations must be performed on the day of the analysis, before analyzing any of the samples. Following calibration, an independently prepared standard (not from same calibration stock solution) must be analyzed. The measured value of the independently prepared standard must be within + 10 percent of the expected value.

(b) Sample Preparation. Carefully separate the three sections of each sorbent trap. Combine for analysis all materials associated with each section, i.e., any supporting substrate that the sample gas passes through prior to entering a media section (e.g., glass wool, polyurethane foam, etc.) must be analyzed with that segment.

(c) Spike Recovery Study. Before analyzing any field samples, the laboratory must demonstrate the ability to recover and quantify Hg from the sorbent media by performing the following spike recovery study for sorbent media traps spiked with elemental mercury. Using the procedures described in subsections (5)(b) and (11)(a) of this rule, spike the third section of nine sorbent traps with gaseous Hg<sub>0</sub>, i.e., three traps at each of three different mass loadings, representing the range of masses anticipated in the field samples. This will yield a 3 x 3 sample matrix. Prepare and analyze the third section of each spiked trap, using the techniques that will be used to prepare and analyze the field samples. The average recovery for each spike concentration must be between 85 and 115 percent. If multiple types of sorbent media are to be analyzed, a separate spike recovery study is required for each sorbent material. If multiple ranges are calibrated, a separate spike recovery study is required for each range.

(d) Field Sample Analyses. Analyze the sorbent trap samples following the same procedures that were used for conducting the spike recovery study. The three sections of the sorbent trap must be analyzed separately (i.e., section 1, then section 2, then section 3). Quantify the mass of total Hg for each section based on analytical system response and the calibration curve from subsection (10)(a) of this rule. Determine the spike recovery from sorbent trap section 3. Pre-sampling spike recoveries must be between 75 and 125 percent. To report final Hg mass, normalize the data for sections 1 and 2 based on the sample-specific spike recovery, and add the normalized masses together.

(12) Calculations and Data Analysis.

(a) Calculation of Pre-Sampling Spiking Level. Determine sorbent trap section 3 spiking level using estimates of the stack Hg concentration, the target sample flow rate, and the expected sample duration. First, calculate the expected Hg mass that will be collected in section 1 of the trap. The presampling spike must be within + 50 percent of this mass. Example calculation: For an estimated stack Hg concentration of 5 µg/m<sup>3</sup>, a target sample rate of 0.30 L/min, and a sample duration of 5 days:

$$(0.30 \text{ L/min}) (1440 \text{ min/day}) (5 \text{ days}) (10^{-3} \text{ m}^3/\text{liter}) (5 \mu\text{g}/\text{m}^3) = 10.8 \mu\text{g}$$

A pre-sampling spike of 10.8 µg + 50 percent is, therefore, appropriate.

(b) Calculations for Flow-Proportional Sampling. For the first hour of the data collection period, determine the reference ratio of the stack gas volumetric flow rate to the sample flow rate, as follows:

$$R_{\text{ref}} = K \times Q_{\text{ref}} / F_{\text{ref}}$$

Where:

$R_{\text{ref}}$  = Reference ratio of hourly stack gas flow rate to hourly sample flow rate

$Q_{\text{ref}}$  = Average stack gas volumetric flow rate for first hour of collection period, adjusted for bias, if necessary according to section 7.6.5 of appendix A to 40 CFR part 75, (scfh)

$F_{\text{ref}}$  = Average sample flow rate for first hour of the collection period, in appropriate units (e.g., liters/min, cc/min, dscm/min)

$K$  = Power of ten multiplier, to keep the value of  $R_{\text{ref}}$  between 1 and 100. The appropriate  $K$  value will depend on the selected units of measure for the sample flow rate. Then, for each subsequent hour of the data collection period, calculate ratio of the stack gas flow rate to the sample flow rate using the following equation:

$$R_h = K \times Q_h / F_h$$

Where:

$R_h$  = Ratio of hourly stack gas flow rate to hourly sample flow rate

$Q_h$  = Average stack gas volumetric flow rate for the hour, adjusted for bias, if necessary, according to section 7.6.5 of appendix A to 40 CFR part 75, (scfh)

$F_h$  = Average sample flow rate for the hour, in appropriate units (e.g., liters/min, cc/min, dscm/min)

$K$  = Power of ten multiplier, to keep the value of  $R_h$  between 1 and 100. The appropriate  $K$  value will depend on the selected units of measure for the sample flow rate and the range of expected stack gas flow rates.

Maintain the value of  $R_h$  within + 25 percent of  $R_{\text{ref}}$  throughout the data collection period.

(c) Calculation of Spike Recovery. Calculate the percent recovery of each section 3 spike, as follows:

$$\%R = (M_3/M_s) \times 100$$

Where:

$\%R$  = Percentage recovery of the presampling spike

$M_3$  = Mass of Hg recovered from section 3 of the sorbent trap, (µg)

$M_s$  = Calculated Hg mass of the pre-sampling spike, from paragraph (7)(a)(B) of this rule, (µg)

(d) Calculation of Breakthrough. Calculate the percent breakthrough to the second section of the sorbent trap, as follows:

$$\%B = (M_2/M_1) \times 100$$

Where:

$\%B$  = Percent breakthrough

$M_2$  = Mass of Hg recovered from section 2 of the sorbent trap, (µg)

$M_1$  = Mass of Hg recovered from section 1 of the sorbent trap, (µg)

(e) Normalizing Measured Hg Mass for Section 3 Spike Recoveries. Based on the results of the spike recovery in subsection (12)(c) of this rule, normalize the Hg mass collected in sections 1 and 2 of the sorbent trap, as follows:

$$M^* = ((M_1 + M_2) \times M_s) / M_3$$

Where:

$M^*$  = Normalized total mass of Hg recovered from sections 1 and 2 of the sorbent trap, (µg)

$M_1$  = Mass of Hg recovered from section 1 of the sorbent trap, unadjusted, (µg)

$M_2$  = Mass of Hg recovered from section 2 of the sorbent trap, unadjusted, (µg)

$M_s$  = Calculated Hg mass of the pre-sampling spike, from paragraph (7)(a)(B) of this rule, (µg)

$M_3$  = Mass of Hg recovered from section 3 of the sorbent trap, (µg)

(f) Calculation of Hg Concentration. Calculate the Hg concentration for each sorbent trap, using the following equation:

$$C = M^* / V_t$$

Where:

$C$  = Concentration of Hg for the collection period, (µg/dscm)

$M^*$  = Normalized total mass of Hg recovered from sections 1 and 2 of the sorbent trap, (µg)

$V_t$  = Total volume of dry gas metered during the collection period, (dscm). For the purposes of this rule, standard temperature and pressure are defined as 20°C and 760 mm Hg, respectively.

(g) Calculation of Paired Trap Agreement. Calculate the relative deviation (RD) between the Hg concentrations measured with the paired sorbent traps as follows:

$$RD = ((C_a - C_b) / (C_a + C_b)) \times 100$$

Where:

$RD$  = Relative deviation between the Hg concentrations from traps "a" and "b" (percent)

$C_a$  = Concentration of Hg for the collection period, for sorbent trap "a" (µg/dscm)

$C_b$  = Concentration of Hg for the collection period, for sorbent trap "b" (µg/dscm)

(h) Calculation of Hg Mass Emissions. To calculate Hg mass emissions, follow the procedures in OAR 340-228-0619(1)(b). Use the average of the two Hg concentrations from the paired traps in the calculations, except as provided in OAR 340-228-0617(8) or in Table 2 to this division.

(13) Method Performance. These monitoring criteria and procedures have been applied to coal-fired utility boilers (including units with post-



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combustion emission controls), having vapor-phase Hg concentrations ranging from 0.03 µg/dscm to 100 µg/dscm.

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0629

### Out of Control Periods and Adjustment for System Bias

(1) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of OAR 340-228-0623, data must be substituted using the applicable missing data procedures.

(2) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under OAR 340-228-0621 or the applicable provisions of 40 CFR part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this section, an audit must be either a field audit or an audit of any information submitted to the Department. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system must not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator must follow the applicable initial certification or recertification procedures in OAR 340-228-0621 for each disapproved monitoring system.

(3) When the bias test indicates that a flow monitor, a Hg concentration monitoring system or a sorbent trap monitoring system is biased low (i.e., the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic), the owner or operator must adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor given in Equations A-11 and A-12 of appendix A to 40 CFR part 75, to adjust the monitored data.

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0631

### Standard Missing Data Procedures for Hg CEMS

(1) Once 720 quality assured monitor operating hours of Hg concentration data have been obtained following initial certification, the owner or operator must provide substitute data for Hg concentration in accordance with the procedures in 40 CFR 75.33(b)(1) through (b)(4), except that the term "Hg concentration" shall apply rather than "SO<sub>2</sub> concentration," the term "Hg concentration monitoring system" shall apply rather than "SO<sub>2</sub> pollutant concentration monitor," the term "maximum potential Hg concentration," as defined in 340-228-0602(25) shall apply, rather than "maximum potential SO<sub>2</sub> concentration", and the percent monitor data availability trigger conditions prescribed for Hg in Table 1 of this division shall apply rather than the trigger conditions prescribed for SO<sub>2</sub>.

(2) For a unit equipped with add-on Hg emission controls (e.g., carbon injection), the standard missing data procedures in section (1) of this rule may only be used for hours in which the Hg emission controls are documented to be operating properly, as described in OAR 340-228-0635(6). For any hour(s) in the missing data period for which this documentation is unavailable, the owner or operator must report, as applicable, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25). In addition, under 40 CFR 75.64(c), the owner or operator must submit as part of each quarterly report, a certification statement, verifying the proper operation of the Hg emission controls for each missing data period in which the procedures in section (1) of this rule are applied.

(3) For units with add-on Hg controls, when the percent monitor data availability is less than 80.0 percent and is greater than or equal to 70.0 percent, and a missing data period occurs, consistent with 40 CFR 75.34(a)(3), for each missing data hour in which the Hg emission controls are documented to be operating properly, the owner or operator may report the maximum controlled Hg concentration recorded in the previous 720 quality-assured monitor operating hours. In addition, when the percent monitor data availability is less than 70.0 percent and a missing data period occurs, consistent with 40 CFR 75.34(a)(5), for each missing data hour in which

the Hg emission controls are documented to be operating properly, the owner or operator may report the greater of the maximum expected Hg concentration (MEC) or 1.25 times the maximum controlled Hg concentration recorded in the previous 720 quality-assured monitor operating hours. The MEC must be determined in accordance with OAR 340-228-0602(24).

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0633

### Missing Data Procedures for Sorbent Trap Monitoring Systems

(1) If a primary sorbent trap monitoring system has not been certified by the applicable compliance date specified under OAR 340-228-0609(2), and if the quality-assured Hg concentration data from a certified backup Hg monitoring system, reference method, or approved alternative monitoring system are unavailable, the owner or operator must report the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), until the primary system is certified.

(2) For a certified sorbent trap system, a missing data period will occur in the following circumstances, unless quality-assured Hg concentration data from a certified backup Hg CEMS, sorbent trap system, reference method, or approved alternative monitoring system are available:

(a) A gas sample is not extracted from the stack during unit operation (e.g. during a monitoring system malfunction or when the system undergoes maintenance); or

(b) The results of the Hg analysis for the paired sorbent traps are missing or invalid (as determined using the quality assurance procedures in OAR 340-228-0627). The missing data period begins with the hour in which the paired sorbent traps for which the Hg analysis is missing or invalid were put into service. The missing data period ends at the first hour in which valid Hg concentration data are obtained with another pair of sorbent traps (i.e., the hour at which this pair of traps was placed in service), or with a certified backup Hg CEMS, reference method, or approved alternative monitoring system.

(3) Initial missing data procedures. Use the following missing data procedures until 720 hours of quality-assured Hg concentration data have been collected with the sorbent trap monitoring system(s), following initial certification. For each hour of the missing data period, the substitute data value for Hg concentration shall be the average Hg concentration from all valid sorbent trap analyses to date, including data from the initial certification test runs.

(4) Standard missing data procedures. Once 720 quality-assured hours of data have been obtained with the sorbent trap system(s), begin reporting the percent monitor data availability in accordance with 40 CFR 75.32 and switch from the initial missing data procedures in section (3) of this rule to the standard missing data procedures in OAR 340-228-0631.

(5) Notwithstanding the requirements of sections (3) and (4) of this rule, if the unit has add-on Hg emission controls, the owner or operator must report the maximum potential Hg concentration, as defined in 340-228-0602(25), for any hour(s) in the missing data period for which proper operation of the Hg emission controls is not documented according to OAR 340-228-0635(6).

(6) In cases where the owner or operator elects to use a primary Hg CEMS and a certified redundant (or non-redundant) backup sorbent trap monitoring system (or vice-versa), when both the primary and backup monitoring systems are out-of-service and quality-assured Hg concentration data from a temporary like-kind replacement analyzer, reference method, or approved alternative monitoring system are unavailable, the previous 720 quality-assured monitor operating hours reported in the quarterly report under OAR 340-228-0637(4) must be used for the required missing data lookback, irrespective of whether these data were recorded by the Hg CEMS, the sorbent trap system, a temporary like-kind replacement analyzer, a reference method, or an approved alternative monitoring system.

Stat. Auth.: ORS 468.020 & 468A.310  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-228-0635

### Recordkeeping

(1) General recordkeeping provisions. The owner or operator of any coal-fired electric generating unit must maintain for each coal-fired electric generating unit and each non-affected unit under OAR 340-228-0615(2)(b)(B) a file of all measurements, data, reports, and other required information at the source in a form suitable for inspection for at least 5 years from the date of each record. Except for the certification data required in 40 CFR 75.57(a)(4) and the initial submission of the monitoring plan required in 40 CFR 75.57(a)(5), the data must be collected beginning with

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the earlier of the date of provisional certification or the compliance deadline in OAR 340-228-0609(2). The certification data required in 40 CFR 75.57(a)(4) must be collected beginning with the date of the first certification test performed. The file must contain the following information:

(a) The information required in 40 CFR 75.57(a)(2), (a)(4), (a)(5), (a)(6), (b), (c)(2), (g) (if applicable), (h), and sections (4) or (5) of this rule (as applicable).

(b) For coal-fired electric generating units using Hg CEMS or sorbent trap monitoring systems, for each hour when the unit is operating, record the Hg mass emissions, calculated in accordance with OAR 340-228-0619.

(c) Heat input and Hg methodologies for the hour.

(d) Formulas from monitoring plan for total Hg mass emissions and heat input rate (if applicable); and

(e) Laboratory calibrations of the source sampling equipment. For sorbent trap monitoring systems, the laboratory analyses of all sorbent traps, and information documenting the results of all leak checks and other applicable quality control procedures.

(f) Unless otherwise provided, the owners and operators of the coal-fired electric generating unit must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Department.

(A) All emissions monitoring information, in accordance with OAR 340-228-0609 through 0637.

(B) Copies of all reports, compliance certifications, and other submissions.

(2) Certification, quality assurance, and quality control record provisions. The owner or operator of a coal-fired electric generating unit must maintain the information required in 40 CFR 75.59, including the following:

(a) For each Hg monitor, the owner or operator must record the information in 40 CFR 75.59(a)(1)(i) through (xi) for all daily and 7-day calibration error tests, all daily system integrity checks (Hg monitors, only), and all off-line calibration demonstrations, including any follow-up tests after corrective action.

(b) For each Hg concentration monitor, the owner or operator must record the information in 40 CFR 75.59(a)(3)(i) through (x) for the initial and all subsequent linearity check(s) and 3-level system integrity checks (Hg monitors with converters, only), including any follow-up tests after corrective action.

(c) For each Hg concentration monitoring system or sorbent trap monitoring system, the owner or operator must record the information in 40 CFR 75.59(a)(5)(i) and (iii) through (vii) for the initial and all subsequent relative accuracy test audits. The owner or operator must also record individual test run data from the relative accuracy test audit for the Hg concentration monitoring system or sorbent trap monitoring system, including the information in 40 CFR 75.59(a)(5)(ii)(A) through (M).

(d) For each Hg pollutant concentration monitor, the owner or operator must record the information in 40 CFR 75.59(a)(6)(i) through (xi) for the cycle time test.

(e) For each relative accuracy test audit run using the Ontario Hydro Method to determine Hg concentration:

- (A) Percent CO<sub>2</sub> and O<sub>2</sub> in the stack gas, dry basis;
- (B) Moisture content of the stack gas (percent H<sub>2</sub>O);
- (C) Average stack temperature (°F);
- (D) Dry gas volume metered (dscm);
- (E) Percent isokinetic;
- (F) Particle-bound Hg collected by the filter, blank, and probe rinse (μg);

(G) Oxidized Hg collected by the KCl impingers (μg);

(H) Elemental Hg collected in the HNO<sub>3</sub>/H<sub>2</sub>O<sub>2</sub> impinger and in the KMnO<sub>4</sub>/H<sub>2</sub>SO<sub>4</sub> impingers (μg);

(I) Total Hg, including particle-bound Hg (μg); and

(J) Total Hg, excluding particle-bound Hg (μg).

(f) For each RATA run using Method 29 to determine Hg concentration:

- (A) Percent CO<sub>2</sub> and O<sub>2</sub> in the stack gas, dry basis;
- (B) Moisture content of the stack gas (percent H<sub>2</sub>O);
- (C) Average stack gas temperature (°F);
- (D) Dry gas volume metered (dscm);
- (E) Percent isokinetic;
- (F) Particulate Hg collected in the front half of the sampling train, corrected for the front-half blank value (μg); and
- (G) Total vapor phase Hg collected in the back half of the sampling train, corrected for the back-half blank value (μg).

(g) When hardcopy relative accuracy test reports, certification reports, recertification reports, or semiannual or annual reports for Hg CEMS or sorbent trap monitoring systems are required or requested under 40 CFR 75.60(b)(6) or 75.63, the reports must include, at a minimum, the elements in 40 CFR 75.59(a)(9)(i) through (ix) (as applicable to the type(s) of test(s) performed). For sorbent trap monitoring systems, the report must include laboratory analyses of all sorbent traps, and information documenting the results of all leak checks and other applicable quality control procedures.

(h) Except as otherwise provided in subsection (6)(a) of this rule, for units with add-on Hg emission controls, the owner or operator must keep the records in 40 CFR 75.59(c)(1) through (2) on-site in the quality assurance/quality control plan.

(3) Monitoring plan recordkeeping provisions.

(a) General provisions. The owner or operator of a coal-fired electric generating unit must prepare and maintain a monitoring plan for each affected unit or group of units monitored at a common stack and each non coal-fired electric generating unit under OAR 340-228-0615(2)(b)(B). The monitoring plan must contain sufficient information on the continuous monitoring systems and the use of data derived from these systems to demonstrate that all the unit's Hg emissions are monitored and reported.

(b) Updates. Whenever the owner or operator makes a replacement, modification, or change in a certified continuous monitoring system or alternative monitoring system under 40 CFR part 75 subpart E, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to a serial number for a component of a monitoring system), then the owner or operator must update the monitoring plan.

(c) Contents of the monitoring plan. Each monitoring plan must contain the information in 40 CFR 75.53(g)(1) in electronic format and the information in 40 CFR 75.53(g)(2) in hardcopy format.

(4) Hg emission record provisions (CEMS). The owner or operator must record for each hour the information required by this section for each affected unit using Hg CEMS in combination with flow rate, and (in certain cases) moisture, and diluent gas monitors, to determine Hg mass emissions and (if applicable) unit heat input.

(a) For Hg concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(A) Component-system identification code, as provided in 40 CFR 75.53;

(B) Date and hour;

(C) Hourly Hg concentration (μg/m<sup>3</sup>, rounded to the nearest tenth). For a particular pair of sorbent traps, this will be the flow-proportional average concentration for the data collection period;

(D) The bias-adjusted hourly average Hg concentration (μg/m<sup>3</sup>, rounded to the nearest tenth) if a bias adjustment factor is required, as provided in OAR 340-228-0629(3);

(E) Method of determination for hourly Hg concentration using Codes 1–55 in Table 3 to this division; and

(F) The percent monitor data availability (to the nearest tenth of a percent), calculated pursuant to 40 CFR 75.32.

(b) For flue gas moisture content during unit operation (if required), as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination (except where a default moisture value is used in accordance with 40 CFR 75.11(b) or approved under 40 CFR 75.66):

(A) Component-system identification code, as provided in 40 CFR 75.53;

(B) Date and hour;

(C) Hourly average moisture content of flue gas (percent, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the wet- and dry-basis oxygen hourly averages (in percent O<sub>2</sub>, rounded to the nearest tenth);

(D) Percent monitor data availability (recorded to the nearest tenth of a percent) for the moisture monitoring system, calculated pursuant to 40 CFR 75.32; and

(E) Method of determination for hourly average moisture percentage, using Codes 1–55 in Table 3 to this division.

(c) For diluent gas (O<sub>2</sub> or CO<sub>2</sub>) concentration during unit operation (if required), as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(A) Component-system identification code, as provided in 40 CFR 75.53;

(B) Date and hour;

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(C) Hourly average diluent gas (O<sub>2</sub> or CO<sub>2</sub>) concentration (in percent, rounded to the nearest tenth);

(D) Method of determination code for diluent gas (O<sub>2</sub> or CO<sub>2</sub>) concentration data using Codes 1–55, in Table 3 to this division; and

(E) The percent monitor data availability (to the nearest tenth of a percent) for the O<sub>2</sub> or CO<sub>2</sub> monitoring system (if a separate O<sub>2</sub> or CO<sub>2</sub> monitoring system is used for heat input determination), calculated pursuant to 40 CFR 75.32.

(d) For stack gas volumetric flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination, record the information required under paragraphs 40 CFR 75.57(c)(2)(i) through (c)(2)(vi).

(e) For Hg mass emissions during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or nonredundant back-up monitoring system(s), or other approved method(s) of emissions determination:

(A) Date and hour;

(B) Hourly Hg mass emissions (pounds, rounded to three decimal places);

(C) Hourly Hg mass emissions (pounds, rounded to three decimal places), adjusted for bias if a bias adjustment factor is required, as provided in OAR 340-228-0629(3); and

(D) Identification code for emissions formula used to derive hourly Hg mass emissions from Hg concentration, flow rate and moisture data, as provided in 40 CFR 75.53.

(5) Hg emission record provisions (sorbent trap systems). For the sorbent traps used in sorbent trap monitoring systems to quantify Hg concentration (including sorbent traps used for relative accuracy testing), the owner or operator must record for each hour the information required by this section.

(a) For Hg concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(A) Component-system identification code, as provided in 40 CFR 75.53;

(B) The ID number of the monitoring system in which each sorbent trap was used to collect Hg;

(C) The unique identification number of each sorbent trap;

(D) The beginning and ending dates and hours of the data collection period for each sorbent trap;

(E) Hourly Hg concentration (µg/dscm, rounded to the nearest tenth). For a particular pair of sorbent traps, this will be the flow-proportional average concentration for the data collection period;

(F) The bias-adjusted hourly average Hg concentration (µg/dscm, rounded to the nearest tenth) if a bias adjustment factor is required, as provided in OAR 340-228-0629(3);

(G) Method of determination for hourly average Hg concentration using Codes 1–55 in Table 3 to this division; and

(H) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to 40 CFR 75.32.

(b) For flue gas moisture content during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination (except where a default moisture value is used in accordance with 40 CFR 75.11(b) or approved under 40 CFR 75.66), record the information required under paragraphs (4)(b)(A) through (E) of this rule.

(c) For diluent gas (O<sub>2</sub> or CO<sub>2</sub>) concentration during unit operation (if required for heat input determination), record the information required under paragraphs (4)(c)(A) through (E) of this rule.

(d) For stack gas volumetric flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination, record the information required under 40 CFR 75.57(c)(2)(i) through (c)(2)(vi).

(e) For Hg mass emissions during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or nonredundant back-up monitoring system(s), or other approved method(s) of emissions determination, record the information required under subsection (4)(e) of this rule.

(f) Record the average flow rate of stack gas through each sorbent trap (in appropriate units, e.g., liters/min, cc/min, dscm/min).

(g) Record the dry gas meter reading (in dscm, rounded to the nearest hundredth), at the beginning and end of the collection period and at least once in each unit operating hour during the collection period.

(h) Calculate and record the ratio of the bias-adjusted stack gas flow rate to the sample flow rate, as described in OAR 340-228-0627(11)(b).

(i) Information documenting the results of the required leak checks;

(j) The analysis of the Hg collected by each sorbent trap; and

(k) Information documenting the results of the other applicable quality control procedures in OAR 340-228-0617, 0623, and 0627.

(6) General recordkeeping provisions for specific situations. Except as otherwise provided in 40 CFR 75.34(d), the owner or operator must record:

(a) Parametric data which demonstrate, for each hour of missing Hg emission data, the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data must be maintained on site and must be submitted, upon request, to the Department.

(b) A flag indicating, for each hour of missing Hg emission data, either that the add-on emission controls are operating properly, as evidenced by all parameters being within the ranges specified in the quality assurance/quality control program, or that the add-on emission controls are not operating properly.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-228-0637

#### Reporting

(1) General reporting provisions.

(a) The owner or operator of an affected unit must comply with all reporting requirements in this section.

(b) The owner or operator of an affected unit must submit the following for each affected unit or group of units monitored at a common stack and each non-affected unit under OAR 340-228-0615(2)(b)(B):

(A) Initial certification and recertification applications in accordance with OAR 340-228-0621;

(B) Monitoring plans in accordance with section (2) of this rule; and

(C) Quarterly reports in accordance with section (4) of this rule.

(c) Quality assurance RATA reports. If requested by the Department, the owner or operator of an affected unit must submit the quality assurance RATA report for each affected unit or group of units monitored at a common stack and each non-affected unit under OAR 340-228-0615(2)(b)(B) by the later of 45 days after completing a quality assurance RATA or 15 days of receiving the request. The owner or operator must report the hard-copy information required by 40 CFR 75.59(a)(9) and OAR 340-228-0635(2)(f) to the Department.

(d) Notifications. The owner or operator of an affected unit must submit written notice to the Department according to the provisions in 40 CFR 75.61 for each affected unit or group of units monitored at a common stack and each non-affected unit under OAR 340-228-0615(2)(b)(B).

(2) Monitoring plans. The owner or operator of a coal-fired electric generating unit must comply with the applicable requirements of subsections (2)(a) and (b) of this rule and 40 CFR 63.7521(b).

(a) The owner or operator of an affected unit must submit to the Department a complete, up-to-date monitoring plan file for each affected unit or group of units monitored at a common stack and each non-affected unit under OAR 340-228-0615(2)(b)(B), as follows: No later than 21 days prior to the commencement of initial certification testing; at the time of a certification or recertification application submission; and whenever an update of the monitoring plan is required, under 40 CFR 75.53. In addition the information in 40 CFR 75.53(e)(1), the plan must include the type(s) of emission controls for Hg installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process; control equipment code, installation date, and optimization date; control equipment retirement date (if applicable); primary/secondary controls indicator; and an indicator for whether the controls are an original installation.

(b) The owner or operator of an affected unit must submit all of the information required under 40 CFR 75.53, for each affected unit or group of units monitored at a common stack and each non-affected unit under OAR 340-228-0615(2)(b)(B), to the Department prior to initial certification. Thereafter, the owner or operator must submit information only if that portion of the monitoring plan is revised. The owner or operator must submit the required information as follows: no later than 21 days prior to the commencement of initial certification testing; with any certification or recertification application, if a monitoring plan change is associated with the recertification event; and within 30 days of any other event with which a monitoring plan change is associated, pursuant to 40 CFR 75.53(b).



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(3) Certification applications. The owner or operator must submit an application to the Department within 45 days after completing all initial certification or recertification tests required under OAR 340-228-0621, including the information required under 40 CFR 75.63.

(4) Quarterly reports. The owner or operator must submit quarterly reports, as follows:

(a) Submission. Quarterly reports must be submitted, beginning with the calendar quarter containing the compliance date in OAR 340-228-0609(2). The owner or operator must report the data and information in this subsection and the applicable compliance certification information in subsection (4)(b) of this rule to the Department quarterly. Each report must be submitted to the Department within 30 days following the end of each calendar quarter. Each report must include the date of report generation and the following information for each affected unit or group of units monitored at a common stack.

(A) The facility information in 40 CFR 75.64(a)(3); and

(B) The information and hourly data required in OAR 340-228-0635(1) and (2), except for:

(i) Descriptions of adjustments, corrective action, and maintenance;

(ii) Other information such as field data sheets, lab analyses, quality control plan;

(iii) For units with add-on Hg emission controls, the parametric information in OAR 340-228-0635(6);

(iv) Information required by 40 CFR 75.57(h) concerning the causes of any missing data periods and the actions taken to cure such causes;

(v) Hardcopy monitoring plan information required by 40 CFR 75.53, OAR 340-228-0637(2), and hardcopy test data and results required by 40 CFR 75.59 and OAR 340-228-0635(2);

(vi) Records of flow polynomial equations and numerical values required by 40 CFR 75.59(a)(5)(vi);

(vii) Stratification test results required as part of RATAs;

(viii) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to operational problems with the unit;

(ix) Supplementary RATA information required under 40 CFR 75.59(a)(7) and OAR 340-228-0635(2)(e), except that:

(I) The applicable data elements under 40 CFR 75.59(a)(7)(ii)(A) through (T) and under 40 CFR 75.59(a)(7)(iii)(A) through (M) must be reported for flow RATAs at circular or rectangular stacks (or ducts) in which angular compensation for pitch and/or yaw angles is used (i.e. Method 2F and 2G in appendixes A-1 and A-2 to 40 CFR part 60), with or without wall effects adjustments;

(II) The applicable data elements under 40 CFR 75.59(a)(7)(ii)(A) through (T) and under 40 CFR 75.59(a)(7)(iii)(A) through (M) must be reported for any flow RATA run at a circular stack in which Method 2 in appendixes A-1 and A-2 to 40 CFR part 60 is used and a wall effects adjustment factor is determined by direct measurement;

(III) The data under 40 CFR 75.59(a)(7)(ii)(T) must be reported for all flow RATAs at circular stacks in which Method 2 in appendixes A-1 and A-2 to 40 CFR part 60 is used and a default wall effects adjustment factor is applied; and

(IV) The data under 40 CFR 75.59(a)(7)(ix)(A) through (F) must be reported for all flow RATAs at rectangular stacks or ducts in which Method 2 in appendixes A-1 and A-2 to 40 CFR part 60 is used and a wall effects adjustment factor is applied.

(x) For units using sorbent trap monitoring systems, the hourly dry gas meter readings taken between the initial and final meter readings for the data collection period;

(C) Pounds of Hg emitted during quarter and cumulative pounds of Hg emitted in the year-to-date (rounded to the nearest thousandth);

(E) Unit or stack operating hours for quarter, cumulative unit or stack operating hours for year-to-date; and

(F) Reporting period heat input (if applicable) and cumulative, year-to-date heat input.

(b) Compliance certification.

(A) The owner or operator must certify that the monitoring plan information in each quarterly report (i.e., component and system identification codes, formulas, etc.) represent current operating conditions for the affected unit(s)

(B) The owner or operator must submit and sign a compliance certification in support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification must state that:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of OAR 340-228-0609 through 0637 and 40 CFR part 75, including the quality assurance procedures and specifications; and

(ii) With regard to a unit with add-on Hg emission controls, that for all hours where data are substituted in accordance with OAR 340-228-0631(2), the add-on emission controls were operating within the range of parameters listed in the quality assurance plan for the unit, and that the substitute values do not systematically underestimate Hg emissions.

(5) Reporting data prior to initial certification. If, by the applicable compliance date under OAR 340-228-0609(2), the owner or operator of a coal-fired electric generating unit has not successfully completed all required certification tests for any monitoring system(s), he or she must determine, record and report hourly data prior to initial certification using one of the following procedures, for the monitoring system(s) that are uncertified:

(a) For Hg concentration and flow monitoring systems, report the maximum potential Hg concentration of Hg as defined in OAR 340-228-0602(25) and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75; or

(b) For any unit, report data from the reference methods in OAR 340-228-0602(33) or in 40 CFR 75.22; or

(c) For any unit that is required to report heat input, report (as applicable) the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75, the maximum potential CO<sub>2</sub> concentration, as defined in section 2.1.3.1 of appendix A to 40 CFR part 75, the minimum potential O<sub>2</sub> concentration, as defined in section 2.1.3.2 of appendix A to 40 CFR part 75, and the minimum potential percent moisture, as defined in section 2.1.5 of appendix A to 40 CFR part 75.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-230-0300

#### Applicability

(1) Applicability: OAR 340-230-0310 through 340-230-0359 apply to each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994.

(a) MWC greater than 250 tons per day that commenced construction after September 20, 1989 and on or before September 20, 1994 are also subject to **40 CFR Part 60 Subpart Ea** as adopted under OAR 340-238-0060.

(b) MWC subject to OAR 340-230-0300 through 340-230-0350 are not subject to the incinerator rules in OAR 340-230-0100 through 340-230-0150.

(2) Exemptions:

(a) Any municipal waste combustion unit that is capable of combusting more than 250 tons per day of municipal solid waste and is subject to a federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than or equal to 11 tons per day is not subject to this rule if the owner or operator:

(A) Notifies the Department of an exemption claim;

(B) Provides a copy of the federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and

(C) Keeps records of the amount of municipal solid waste fired on a daily basis.

(b) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission limits under these rules are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR 60, Subparts Ea or Eb.

(c) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to these rules if the owner or operator of the facility notifies the Department of this exemption and provides data documenting that the facility qualifies for this exemption.

(d) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to these rules if the owner or operator of the facility notifies the Department of this exemption and provides data documenting that the facility qualifies for this exemption.

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(e) Any unit combusting a single-item waste stream of tires is not subject to this rule if the owner or operator of the unit:

(A) Notifies the Department of an exemption claim; and

(B) Provides data documenting that the unit qualifies for this exemption.

(f) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to these rules.

(g) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to these rules.

(h) Any cofired combustor, as defined in 40 CFR 60.51b, that meets the capacity specifications in section (1) of this rule is not subject to these rules if the owner or operator of the cofired combustor:

(A) Notifies the Department of an exemption claim;

(B) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor); and

(C) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(i) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b) are not subject to this rule if the owner or operator of the plastics/rubber recycling unit keeps records of:

(A) The weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis;

(B) The weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and

(C) The name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to these rules.

(j) Air curtain incinerators that meet the capacity specifications in subsection (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under OAR 340-230-0310, the testing procedures under OAR 340-230-0340, and the reporting and recordkeeping provisions under OAR 340-230-0350.

(k) Air curtain incinerators that meet the capacity specifications in subsection (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(l) Cement kilns firing municipal solid waste are not subject to this subpart.

(m) Any affected facility meeting the applicability requirements under this rule is not subject to **40 CFR part 60 subpart E**.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08

### 340-230-0310

#### Emissions Limitations

No person may cause, suffer, allow, or permit the operation of any affected municipal waste combustor unit in a manner that violates the following emission limits and requirements:

(1) Before April 28, 2009, particulate matter emissions from each unit must not exceed 27 milligrams per dry standard cubic meter (0.012 grains per dry standard cubic foot) corrected to 7 percent oxygen. On and after April 28, 2009, particulate matter emissions from each unit must not exceed 25 milligrams per dry standard cubic meter (0.011 grains per dry standard cubic foot) corrected to 7 percent oxygen.

(2) Opacity. The emission limit for opacity exhibited by the gases discharged to the atmosphere from a designated facility must not exceed 10 percent opacity as a 6-minute average.

(3) Municipal Waste Combustor Metals:

(a) Before April 28, 2009, cadmium emissions from each unit must not exceed 0.040 milligrams per dry standard cubic meter (0.000018 gr/dscf) corrected to 7 percent oxygen. On and after April 28, 2009, cadmium emissions from each unit must not exceed 0.020 milligrams per dry standard cubic meter (0.000008 gr/dscf) corrected to 7 percent oxygen.

(b) Before April 28, 2009, lead emissions from each unit must not exceed 0.44 milligrams per dry standard cubic meter (0.00020 gr/dscf) corrected to 7 percent oxygen. On and after April 28, 2009, lead emissions from each unit must not exceed 0.20 milligrams per dry standard cubic meter (0.00009 gr/dscf) corrected to 7 percent oxygen.

(c) Before April 28, 2009, mercury emissions from each unit must not exceed 0.080 milligrams per dry standard cubic meter (0.000035 gr/dscf) or 15 percent of the potential mercury emission concentration (an 85 percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent. On and after April 28, 2009, mercury emissions from each unit must not exceed 0.050 milligrams per dry standard cubic meter (0.000022 gr/dscf) or 15 percent of the potential mercury emission concentration (an 85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(4) Sulfur dioxide (SO<sub>2</sub>) emissions from each unit must not exceed 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(5) Hydrogen chloride (HCl) emissions from each unit must not exceed 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(6) The dioxin/furan emissions from each unit must not exceed:

(a) Before April 28, 2009, 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for a municipal waste combustor unit that employs an electrostatic precipitator-based emission control system;

(b) On and after April 28, 2009, 35 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for a municipal waste combustor unit that employs an electrostatic precipitator-based emission control system;

(c) Before April 28, 2009, 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for a municipal waste combustor unit that does not employ an electrostatic precipitator-based emission control system. On and after April 28, 2009, 15 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for a municipal waste combustor unit that does not employ an electrostatic precipitator-based emission control system.

(7) Emissions of nitrogen oxides from each unit must not exceed 205 parts per million by volume on a dry basis corrected to 7 percent oxygen.

(8) Fugitive Emissions:

(a) No owner or operator may cause or allow visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations, except as provided in subsections (b) and (c) of this section.

(b) The emission limit specified in subsection (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in subsection (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in subsection (a) of this section do not apply during maintenance and repair of ash conveying systems.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0960; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08

### 340-230-0320

#### Operating Practices

(1) Emissions of carbon monoxide from each unit must not exceed 100 parts per million by volume on a dry basis corrected to 7 percent oxygen as a 4-hour block arithmetic average.

(2) No owner or operator of an affected facility may cause such facility to operate at a load level greater than 110 percent of the maximum demonstrated municipal waste combustor unit load as defined in **40 CFR 60.51b** except as specified in subsections (2)(a) and (b) of this rule. The averaging time is a 4-hour block arithmetic average as specified under OAR 340-230-0340(9).

(a) During the annual dioxin/furan or mercury performance test and the 2 weeks preceding the annual dioxin/furan or mercury performance test, no municipal waste combustor unit load limit is applicable if the provisions of subsection (2)(b) of this rule are met.

(b) The municipal waste combustor unit load limit may be waived in writing by the Administrator for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions. The munic-

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ipal waste combustor unit load limit continues to apply, and remains enforceable, until and unless the Administrator grants the waiver.

(3) No owner or operator of an affected facility may cause or allow such facility to operate at a temperature, measured at the particulate matter control device inlet, exceeding 17°C above the maximum demonstrated particulate matter control device temperature as defined in 40 CFR 60.51b, except as specified in subsections (3)(a) and (b) of this rule. The averaging time must be a 4-hour block arithmetic average as specified under OAR 340-230-0340(9). The requirements specified in this paragraph apply to each particulate matter control device utilized at the affected facility.

(a) During the annual dioxin/furan or mercury performance test and the 2 weeks preceding the annual dioxin/furan or mercury performance test, no particulate matter control device temperature limitations are applicable if the provisions of subsection (3)(b) of this rule are met.

(b) The particulate matter control device temperature limits may be waived in writing by the Administrator for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions. The temperature limits continues to apply, and remains enforceable, until and unless the Administrator grants the waiver.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0970; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08

### 340-230-0330

#### Operator Training and Certification

(1) Each chief facility operator and shift supervisor must have completed full certification with either the American Society of Mechanical Engineers (ASME) (QRO-1-1994 - see 40 CFR 60.17) or other State approved certification program.

(2) If a chief facility operator or shift supervisor is not fully certified in accordance with section (1) of this rule, the chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the ASME (QRO-1-1994 - see 40 CFR 60.17) or other State approved certification and must have scheduled a full certification exam with either the ASME (QRO-1-1994) or other State approved certification program.

(3) No owner or operator of an affected facility may allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility: A fully certified chief facility operator, a provisionally certified chief facility operator who is scheduled to take the full certification exam, a fully certified shift supervisor, or a provisionally certified shift supervisor who is scheduled to take the full certification exam.

(a) If both the certified chief operator and certified shift supervisor are unavailable, a provisionally certified control room operator on site at the affected facility may fulfill the certified operator requirement. Depending on the length of time that a certified chief operator and certified shift supervisor are away, the owner or operator of the affected facility must meet one of the three criteria:

(A) When the certified chief facility operator and certified shift supervisor are both off site for 12 hours or less, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor.

(B) When the certified chief facility operator and certified shift supervisor are off site for more than 12 hours, but for two weeks or less, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor without notice or approval. However, the owner or operator of the affected facility must record the period when the certified chief facility operator and certified shift supervisor are off site and include that information in the annual report as specified under OAR 340-230-0350(3)(e).

(C) When the certified chief facility operator and certified shift supervisor are off site for more than two weeks, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor without approval. However, the owner or operator of the affected facility must take two actions:

(i) Notify in writing. In the notice, state what caused the absence and what actions are being taken by the owner or operator of the facility to ensure that a certified chief facility operator or certified shift supervisor is on site as expeditiously as practicable.

(ii) Submit a status report and corrective action summary to the every four weeks following the initial notification. If the Department provides

notice that the status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Department withdraws the disapproval, municipal waste combustion unit operation may continue.

(b) A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator position at the municipal waste combustion unit may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval for up to six months before taking the ASME QRO certification exam.

(4) The owner or operator of an affected facility must develop and update on a yearly basis a site-specific operating manual that, at a minimum, addresses the elements of municipal waste combustor unit operation specified in subsections (4)(a) through (k) of this rule:

(a) A summary of the applicable standards under OAR 340-230-0310 through 340-230-0335;

(b) A description of basic combustion theory applicable to a municipal waste combustor unit;

(c) Procedures for receiving, handling, and feeding municipal solid waste;

(d) Municipal waste combustor unit startup, shutdown, and malfunction procedures;

(e) Procedures for maintaining proper combustion air supply levels;

(f) Procedures for operating the municipal waste combustor unit within the standards established under OAR 340-230-0310 through 340-230-0335;

(g) Procedures for responding to periodic upset or off-specification conditions;

(h) Procedures for minimizing particulate matter carryover;

(i) Procedures for handling ash;

(j) Procedures for monitoring municipal waste combustor unit emissions; and

(k) Reporting and recordkeeping procedures.

(5) The owner or operator of an affected facility must establish a training program to review the operating manual according to the schedule specified in subsections (5)(a) and (b) of this rule with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

(a) Each person specified in section (5) of this rule must undergo initial training no later than the date specified in paragraph (5)(a)(A) or (B) of this rule, whichever is later.

(A) The date before the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(B) June 19, 1998.

(b) Annually, following the initial review required by subsection (5)(a) of this rule.

(6) The operating manual required by section (4) of this rule must be kept in a readily accessible location for all persons required to undergo training under section (5) of this rule. The operating manual and records of training must be available for inspection by the EPA or the Department upon request.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0980; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08

### 340-230-0335

#### Standards for Municipal Waste Combustor Fugitive Ash Emissions

(1) No owner or operator of an affected facility shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in OAR 340-230-0340(11), except as provided in sections (2) and (3) of this rule.

(2) The emission limit specified in section (1) of this rule does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in section (1) of this rule does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(3) The provisions specified in section (1) of this rule do not apply during maintenance and repair of ash conveying systems.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08



# ADMINISTRATIVE RULES

## 340-230-0340

### Monitoring and Testing

(1) The standards under OAR 340-230-0300 through 0359 apply at all times except during periods of startup, shutdown, and malfunction. Duration of startup, shutdown, or malfunction periods are limited to 3 hours per occurrence, except as provided in subsection (1)(c) of this rule. During periods of startup, shutdown, or malfunction, monitoring data must be dismissed or excluded from compliance calculations, but must be recorded and reported in accordance with the provisions of OAR 340-230-0350(1)(f).

(a) The startup period commences when the affected facility begins the continuous burning of municipal solid waste and does not include any warmup period when the affected facility is combusting fossil fuel or other nonmunicipal solid waste fuel, and no municipal solid waste is being fed to the combustor.

(b) Continuous burning is the continuous, semicontinuous, or batch feeding of municipal solid waste for purposes of waste disposal, energy production, or providing heat to the combustion system in preparation for waste disposal or energy production. The use of municipal solid waste solely to provide thermal protection of the grate or hearth during the startup period when municipal solid waste is not being fed to the grate is not considered to be continuous burning.

(c) For purposes of compliance with the carbon monoxide emissions limit in OAR 340-230-320(1), if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction, the duration of the malfunction period is limited to 15 hours per occurrence. During such periods of malfunction, monitoring data must be dismissed or excluded from compliance calculations, but must be recorded and reported in accordance with the provisions of OAR 340-230-0350(1)(f).

(2) The owner or operator of an affected facility must install, calibrate, maintain, and operate a continuous emission monitoring system for measuring the oxygen or carbon dioxide content of the flue gas at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides emissions, or particulate matter (if the owner or operator elects to continuously monitor emissions under section (13) of this rule) are monitored and record the output of the system and must comply with the test procedures and test methods specified in subsections (2)(a) through (g) of this rule.

(a) The span value of the oxygen (or carbon dioxide) monitor must be 25 percent oxygen (or 20 percent carbon dioxide).

(b) The monitor must be installed, evaluated, and operated in accordance with 40 CFR 60.13.

(c) The monitor must conform to Performance Specification 3 in appendix B of 40 CFR 60 except for section 2.3 (relative accuracy requirement).

(d) The quality assurance procedures of Appendix F of 40 CFR 60 except for section 5.1.1 (relative accuracy test audit) shall apply to the monitor.

(e) If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the following procedures and methods specified in paragraphs (2)(e)(A) through (D) of this rule. This relationship may be reestablished during subsequent performance compliance tests.

(A) The fuel factor equation in Method 3B must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. EPA Reference Method 3, 3A, 3B, or as an alternative ASME PTC-19-10-1981-Part 10, as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(B) Samples must be taken for at least 30 minutes in each hour.

(C) Each sample must represent a 1-hour average.

(D) A minimum of three runs must be performed.

(f) The relationship between carbon dioxide and oxygen concentrations that is established in accordance with subsection (2)(e) of this rule must be submitted to the Department as part of the annual performance test report if the relationship is reestablished during the annual performance test.

(g) During a loss of boiler water level control or loss of combustion air control malfunction period as specified in subsection (1)(c) of this rule, a diluent cap of 14 percent for oxygen or 5 percent for carbon dioxide may be used in the emissions calculations for sulfur dioxide and nitrogen oxides.

(3) Except as provided in subsection (3)(i) of this rule, the procedures and test methods specified in subsections (3)(a) through (j) of this rule must be used to determine compliance with the emission limits for particulate matter and opacity under OAR 340-230-0310(1) and (2).

(a) EPA Reference Method 1 must be used to select sampling site and number of traverse points.

(b) EPA Reference Method 3, 3A or 3B, or as an alternative ASME PTC-19-10-1981-Part 10, as applicable, must be used for gas analysis.

(c) EPA Reference Method 5 must be used for determining compliance with the particulate matter emission limit. The minimum sample volume must be 1.7 cubic meters (60 cubic feet). The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160°C (320°F). An oxygen or carbon dioxide measurement must be obtained simultaneously with each EPA Reference Method 5 run.

(d) The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(e) As specified under 40 CFR 60.8, all performance tests must consist of at least three test runs. The average of the particulate matter emission concentrations from the three test runs is used to determine compliance.

(f) In accordance with subsections (3)(g) and (j) of this rule, EPA Reference Method 9 must be used for determining compliance with the opacity limit except as provided under 40 CFR 60.11(e).

(g) The owner or operator of an affected facility must install, calibrate, maintain, and operate a continuous opacity monitoring system for measuring opacity and must follow the methods and procedures specified in paragraphs (3)(g)(A) through (C) of this rule.

(A) The output of the continuous opacity monitoring system must be recorded on a 6-minute average basis.

(B) The continuous opacity monitoring system must be installed, evaluated, and operated in accordance with 40 CFR 60.13.

(C) The continuous opacity monitoring system must conform to Performance Specification 1 in appendix B of 40 CFR Part 60.

(h) The owner or operator of an affected facility must conduct a performance test for particulate matter on a calendar year basis (no less than 9 calendar months and no more than 15 calendar months following the previous performance test; and must complete five performance tests in each 5-year calendar period).

(i) In place of particulate matter testing with EPA Reference Method 5, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor particulate matter emissions instead of conducting performance testing using EPA Reference Method 5 must install, calibrate, maintain, and operate a continuous emission monitoring system and must comply with the requirements specified in paragraphs (3)(i)(A) through (N) of this rule. The owner or operator who elects to continuously monitor particulate matter emissions instead of conducting performance testing using EPA Reference Method 5 is not required to complete performance testing for particulate matter as specified in subsection (3)(h) of this rule and is not required to continuously monitor opacity as specified in subsection (3)(g) of this rule.

(A) Notify the Administrator and the Department one month before starting use of the system.

(B) Notify the Administrator and the Department one month before stopping use of the system.

(C) The monitor must be installed, evaluated, and operated in accordance with 40 CFR 60.13.

(D) The initial performance evaluation must be completed no later than 180 days of notification to the Administrator and the Department of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5 performance tests, whichever is later.

(E) The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(F) The owner or operator of an affected facility must conduct an initial performance test for particulate matter emissions as required under 40 CFR 60.8. Compliance with the particulate matter emission limit must be determined by using the continuous emission monitoring system specified in subsection (3)(i) of this rule to measure particulate matter and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19, section 12.4.1.

(G) Compliance with the particulate matter emission limit must be determined based on the 24-hour daily (block) average of the hourly arithmetic

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metic average emission concentrations using continuous emission monitoring system outlet data.

(H) At a minimum, valid continuous monitoring system hourly averages must be obtained as specified in subparagraphs (3)(i)(H)(i) and (ii) of this rule for at least 90 percent of the operating hours per calendar quarter and 95 percent of the operating hours per calendar year that the affected facility is combusting municipal solid waste.

(i) At least two data points per hour must be used to calculate each 1-hour arithmetic average.

(ii) Each particulate matter 1-hour arithmetic average must be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(I) The 1-hour arithmetic averages required under paragraph (3)(i)(G) of this rule must be expressed in milligrams per dry standard cubic meter corrected to 7 percent oxygen (dry basis) and must be used to calculate the 24-hour daily arithmetic average emission concentrations. The 1-hour arithmetic averages must be calculated using the data points required under 40 CFR 60.13(e)(2).

(J) All valid continuous emission monitoring system data must be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (3)(i)(H) of this rule are not met.

(K) The continuous emission monitoring system must be operated according to Performance Specification 11 in 40 CFR part 60 appendix B.

(L) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 11 in 40 CFR part 60 appendix B, particulate matter and oxygen (or carbon dioxide) data must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in subparagraphs (3)(i)(L)(i) and (ii) of this rule.

(i) For particulate matter, EPA Reference Method 5 must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, as applicable must be used.

(M) Quarterly accuracy determinations and daily calibration drift tests must be performed in accordance with Procedure 2 in 40 CFR part 60 appendix F.

(N) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data must be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 90 percent of the hours per calendar quarter and 95 percent of the hours per calendar year that the affected facility is operated and combusting municipal solid waste.

(j) For each affected facility, the owner or operator must conduct a performance test for opacity on an annual basis (no less than 9 calendar months and no more than 15 calendar months following the previous performance test; and must complete five performance tests in each 5-year calendar period) using the test method specified in subsection (3)(f) of this rule.

(4) The procedures and test methods specified in subsections (4)(a) and (b) of this rule must be used to determine compliance with the emission limits for cadmium, lead, and mercury under OAR 340-230-0310(3).

(a) The procedures and test methods specified in paragraphs (4)(a)(A) through (G) of this rule must be used to determine compliance with the emission limits for cadmium and lead under OAR 340-230-0310(3)(a) and (b).

(A) EPA Reference Method 1 must be used for determining the location and number of sampling points.

(B) EPA Reference Method 3, 3A, or 3B, or as an alternative ASME PTC-19-10-1981-Part 10, as applicable, must be used for flue gas analysis.

(C) EPA Reference Method 29 must be used for determining compliance with the cadmium and lead emission limits.

(D) An oxygen or carbon dioxide measurement must be obtained simultaneously with each EPA Reference Method 29 test run for cadmium and lead required under paragraph (4)(a)(C) of this rule.

(E) The owner or operator of an affected facility may request that compliance with the cadmium or lead emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(F) All performance tests must consist of at least three test runs conducted under representative full load operating conditions. The average of the cadmium and lead emission concentrations from three test runs or more must be used to determine compliance.

(G) The owner or operator of an affected facility must conduct a performance test for compliance with the emission limits for cadmium and lead on a calendar year basis (no less than 9 calendar months and no more than 15 calendar months following the previous performance test; and must complete five performance tests in each 5-year calendar period).

(b) The procedures and test methods specified in paragraphs (4)(b)(A) through (I) of this rule must be used to determine compliance with the mercury emission limit under OAR 340-230-0310(3)(c).

(A) EPA Reference Method 1 must be used for determining the location and number of sampling points.

(B) EPA Reference Method 3, 3A, or 3B, or as an alternative ASME PTC-19-10-1981-Part 10, as applicable, must be used for flue gas analysis.

(C) EPA Reference Method 29 or as an alternative ASTM D6784-02 must be used to determine the mercury emission concentration. The minimum sample volume when using EPA Reference Method 29 or as an alternative ASTM D6784-02 for mercury is 1.7 cubic meters (60 cubic feet).

(D) An oxygen (or carbon dioxide) measurement must be obtained simultaneously with each EPA Reference Method 29 or as an alternative ASTM D6784-02 test run for mercury required under paragraph (4)(b)(C) of this rule.

(E) The percent reduction in the potential mercury emissions (%PHg) is computed using equation 1: [Equation not included. See ED. NOTE.]

(F) All performance tests must consist of a minimum of three test runs conducted under representative full load operating conditions. The average of the mercury emission concentrations or percent reductions from three test runs or more is used to determine compliance.

(G) The owner or operator of an affected facility must request that compliance with the mercury emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(H) The owner or operator of an affected facility must conduct a performance test for mercury emissions on a calendar year basis (no less than 9 calendar months and no more than 15 calendar months from the previous performance test; and must complete five performance tests in each 5-year calendar period).

(I) The owner or operator of an affected facility where activated carbon injection is used to comply with the mercury emission limit must follow the procedures specified in section (12) of this rule for measuring and calculating carbon usage.

(c) In place of cadmium and lead testing with EPA Reference Method 29 or as an alternative ASTM D6784-02, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring cadmium and lead emissions discharged to the atmosphere and record the output of the system according to the provisions of sections (13) and (14) of this rule.

(d) In place of mercury testing with EPA Reference Method 29 or as an alternative ASTM D6784-02, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system or a continuous automated sampling system for monitoring mercury emissions discharged to the atmosphere and record the output of the system according to the provisions of sections (13) and (14) of this rule, or sections (15) and (16) of this rule, as appropriate. The owner or operator who elects to continuously monitor mercury in place of mercury testing with EPA Reference Method 29 or as an alternative ASTM D6784-02 is not required to complete performance testing for mercury as specified in paragraph (4)(b)(H) of this rule.

(5) The procedures and test methods specified in subsections (5)(a) through (I) of this rule must be used for determining compliance with the sulfur dioxide emission limit under OAR 340-230-0310(4).

(a) EPA Reference Method 19, section 4.3, must be used to calculate the daily geometric average sulfur dioxide emission concentration.

(b) EPA Reference Method 19, section 5.4, must be used to determine the daily geometric average percent reduction in the potential sulfur dioxide emission concentration.

(c) The owner or operator of an affected facility may request that compliance with the sulfur dioxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(d) Compliance with the sulfur dioxide emission limit (concentration or percent reduction) must be determined by using the continuous emission monitoring system specified in subsection (5)(e) of this rule to measure sulfur dioxide and calculating 24-hour daily geometric average emission

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concentration or a 24-hour daily geometric average percent reduction using EPA reference Method 19, sections 4.3 and 5.4, as applicable.

(e) The owner or operator of an affected facility must install, evaluate, calibrate, maintain, and operate a continuous emission monitoring system for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system in accordance with 40 CFR 60.13.

(f) Compliance with the sulfur dioxide emission limit must be determined based on the 24-hour daily geometric average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data if compliance is based on an emission concentration, or continuous emission monitoring system inlet and outlet data if compliance is based on a percent reduction.

(g) At a minimum, valid continuous monitoring system hourly averages must be obtained as specified in paragraphs (5)(g)(A) and (B) of this rule for 90 percent of the operating hours per calendar quarter and 95 percent of the operating hours per calendar year that the affected facility is combusting municipal solid waste.

(A) At least two data points per hour must be used to calculate each 1-hour arithmetic average.

(B) Each sulfur dioxide 1-hour arithmetic average must be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(h) The 1-hour arithmetic averages required under subsection (5)(f) of this rule must be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 24-hour daily geometric average emission concentrations and daily geometric average emission percent reductions. The 1-hour arithmetic averages must be calculated using the data points required under 40 CFR 60.13(e)(2).

(i) All valid continuous emission monitoring system data must be used in calculating average emission concentrations and percent reductions even if the minimum continuous emission monitoring system data requirements of subsection (5)(g) of this rule are not met.

(j) The continuous emission monitoring system must be operated according to Performance Specification 2 in appendix B of 40 CFR 60. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide continuous emission monitoring systems should be no greater than 20 percent of the mean value of the reference method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the reference method and the continuous emission monitoring systems, whichever is greater.

(A) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 2 in appendix B of 40 CFR 60, sulfur dioxide and oxygen (or carbon dioxide) must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in subparagraphs (5)(j)(A)(i) and (ii) of this rule.

(i) For sulfur dioxide, EPA Reference Method 6, 6A, or 6C, or as an alternative ASME PTC-19-10-1981-Part 10, must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, or as an alternative ASME PTC-19-10-1981-Part 10, must be used.

(B) The span value of the continuous emissions monitoring system at the inlet to the sulfur dioxide control device must be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the municipal waste combustor unit. The span value of the continuous emission monitoring system at the outlet of the sulfur dioxide control device must be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the municipal waste combustor unit.

(k) Quarterly accuracy determinations and daily calibration tests must be performed in accordance with Procedure 1 in Appendix F of 40 CFR 60.

(l) When sulfur dioxide emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and/or zero and span adjustments, emissions data must be obtained by using other monitoring systems as approved by the Department or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 90 percent of the hours per calendar quarter and 95 percent of the hours per calendar year that the affected facility is operated and combusting municipal solid waste.

(6) The procedures and test methods specified in subsections (6)(a) through (h) of this rule must be used for determining compliance with the hydrogen chloride emission limit under OAR 340-230-0310(5).

(a) EPA Reference Method 26 or 26A, as applicable, must be used to determine the hydrogen chloride emission concentration. The minimum sampling time for must be 1 hour.

(b) An oxygen (or carbon dioxide) measurement must be obtained simultaneously with each test run for hydrogen chloride required by subsection (6)(a) of this rule.

(c) The percent reduction in potential hydrogen chloride emissions (% PHCl) is computed using equation 2: [Equation not included. See ED. NOTE.]

(d) The owner or operator of an affected facility may request that compliance with the hydrogen chloride emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(e) As specified under 40 CFR 60.8, all performance tests must consist of three test runs. The average of the hydrogen chloride emission concentrations from the three test runs is used to determine compliance.

(f) The owner or operator of an affected facility must conduct a performance test for hydrogen chloride emissions on a calendar year basis (no less than 9 calendar months and no more than 15 calendar months following the previous performance test; and must complete five performance tests in each 5-year calendar period).

(g) In place of hydrogen chloride testing with EPA Reference Method 26 or 26A, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring hydrogen chloride emissions discharged to the atmosphere and record the output of the system according to the provisions of sections (13) and (14) of this rule.

(7) The procedures and test methods specified in subsections (7)(a) through (h) of this rule must be used to determine compliance with the limits for dioxin/furan emissions under OAR 340-230-0310(6).

(a) EPA Reference Method 1 must be used for determining the location and number of sampling points.

(b) EPA Reference Method 3, 3A, or 3B, or as an alternative ASME PTC-19-10-1981-Part 10, as applicable, must be used for flue gas analysis.

(c) EPA Reference Method 23 must be used for determining the dioxin/furan emission concentration.

(A) The minimum sample time must be 4 hours per test run.

(B) An oxygen (or carbon dioxide) measurement must be obtained simultaneously with each EPA Reference Method 23 test run for dioxins/furans.

(d) The owner or operator of an affected facility must conduct performance tests for dioxin/furan emissions in accordance with subsection (7)(c) of this rule, according to one of the schedules specified in paragraphs (7)(d)(A) through (C) of this rule.

(A) Performance tests must be conducted on a calendar year basis (no less than 9 calendar months and no more than 15 calendar months following the previous performance test; and must complete five performance tests in each 5-year calendar period).

(B) For the purpose of evaluating system performance to establish new operating parameter levels, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions, the owner or operator of an affected facility that qualifies for the performance testing schedule specified in paragraph (7)(d)(C) of this rule, may test one unit for dioxin/furan and apply the dioxin/furan operating parameters to similarly designed and equipped units on site by meeting the requirements specified in subparagraphs (7)(d)(B)(i) through (iv) of this rule.

(i) Follow the testing schedule established in paragraph (7)(d)(C) of this rule. For example, each year a different affected facility at the municipal waste combustor plant must be tested, and the affected facilities at the plant must be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable).

(ii) Where such units use carbon to meet the applicable dioxin/furan emission limit, upon meeting the requirements in paragraph (7)(d)(C) of this rule for one affected facility, the owner or operator may elect to apply the average carbon mass feed rate and associated carbon injection system operating parameter levels for dioxin/furan as established in section (13) of this rule to similarly designed and equipped units on site.

(iii) Upon testing each subsequent unit in accordance with the testing schedule established in paragraph (7)(d)(C) of this rule, the dioxin/furan and mercury emissions of the subsequent unit must not exceed the dioxin/furan and mercury emissions measured in the most recent test of that unit prior to the revised operating parameter levels.

(iv) The owner or operator of an affected facility that selects to follow the performance testing schedule specified in paragraph (7)(d)(C) of this rule and apply the carbon injection system operating parameters to similarly designed and equipped units on site must follow the procedures specified in OAR 340-230-0350(3)(d) for reporting.



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(C) Where all performance tests over a 2-year period indicate that dioxin/furan emissions are less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant. At a minimum, a performance test for dioxin/furan emissions must be conducted on a calendar year basis (no less than 9 calendar months and no more than 15 months following the previous performance test; and must complete five performance tests in each 5-year calendar period) for one affected facility at the municipal waste combustor plant. Each year a different affected facility at the municipal waste combustor plant must be tested, and the affected facilities at the plant must be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable). If each annual performance test continues to indicate a dioxin/furan emission level less than or equal to 7 nanograms per dry standard cubic meter (total mass), the owner or operator may continue conducting a performance test on only one affected facility per year. If any annual performance test indicates either a dioxin/furan emission level greater than 7 nanograms per dry standard cubic meter (total mass), performance tests thereafter must be conducted annually on all affected facilities at the plant until and unless all annual performance tests for all affected facilities at the plant over a 2-year period indicate a dioxin/furan emission level less than or equal to 7 nanograms per dry standard cubic meter (total mass).

(e) The owner or operator of an affected facility that selects to follow the performance testing schedule specified in paragraph (7)(d)(C) of this rule must follow the procedures specified in OAR 340-230-0350(3)(d) for reporting the selection of this schedule.

(f) The owner or operator of an affected facility where activated carbon is used must follow the procedures specified in section (12) of this rule for measuring and calculating the carbon usage rate.

(g) The owner or operator of an affected facility may request that compliance with the dioxin/furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(h) As specified under 40 CFR 60.8, all performance tests must consist of three test runs. The average of the dioxin/furan emission concentrations from the three test runs is used to determine compliance.

(i) In place of dioxin/furan sampling and testing with EPA Reference Method 23, an owner or operator may elect to sample dioxin/furan by installing, calibrating, maintaining, and operating a continuous automated sampling system for monitoring dioxin/furan emissions discharged to the atmosphere, recording the output of the system, and analyzing the sample using EPA Reference Method 23. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from monitors is published in the Federal Register or the date of approval of a site-specific monitoring plan. The owner or operator of an affected facility who elects to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Reference Method 23 must install, calibrate, maintain, and operate a continuous automated sampling system and must comply with the requirements specified in sections (15) and (16) of this rule.

(8) The procedures and test methods specified in subsections (8)(a) through (i) of this rule must be used to determine compliance with the nitrogen oxides emission limit for affected facilities.

(a) Compliance with the nitrogen oxides emission limit must be determined by using the continuous emission monitoring system specified in subsection (8)(c) of this rule for measuring nitrogen oxides and calculating a 24-hour daily arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(b) An owner or operator may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(c) The owner or operator of an affected facility must install, calibrate, maintain, and operate a continuous emission monitoring system for measuring nitrogen oxides discharged to the atmosphere, and record the output of the system.

(d) At a minimum, valid continuous emission monitoring system hourly averages must be obtained as specified in paragraphs (8)(d)(A) and (B) of this rule for 90 percent of the operating hours per calendar quarter and for 95 percent of the operating hours per calendar year that the affected facility is combusting municipal solid waste.

(A) At least 2 data points per hour must be used to calculate each 1-hour arithmetic average.

(B) Each nitrogen oxides 1-hour arithmetic average must be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(e) The 1-hour arithmetic averages must be expressed in parts per million by volume (dry basis) and used to calculate the 24-hour daily arithmetic average concentrations. The 1-hour arithmetic averages must be calculated using the data points required under 40 CFR 60.13(e)(2).

(f) All valid continuous emission monitoring system data must be used in calculating emission averages even if the minimum continuous emission monitoring system data requirements of subsection (8)(d) of this rule are not met.

(g) The owner or operator of an affected facility must operate the continuous emission monitoring system according to Performance Specification 2 in Appendix B of 40 CFR 60 and must follow the procedures and methods specified in paragraphs (8)(g)(A) and (B) of this rule.

(A) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 2 in Appendix B of 40 CFR 60, nitrogen oxides and oxygen (or carbon dioxide) must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in subparagraphs (8)(g)(A)(i) and (ii) of this rule.

(i) For nitrogen oxides, EPA Reference Methods 7, 7A, 7C, 7D, or 7E must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, or as an alternative ASME PTC-19-10-1981-Part 10, as applicable, must be used.

(B) The span value of the continuous emission monitoring system must be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of the municipal waste combustor unit.

(h) Quarterly accuracy determinations and daily calibration drift tests must be performed in accordance with Procedure 1 in Appendix F of 40 CFR Part 60.

(i) When nitrogen oxides continuous emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data must be obtained using other monitoring systems as approved by the Department or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 90 percent of the hours per calendar quarter and 95 percent of the hours per calendar year the unit is operated and combusting municipal solid waste.

(9) The procedures specified in subsections (9)(a) through (k) of this rule must be used for determining compliance with the operating requirements under OAR 340-230-0320.

(a) Compliance with the carbon monoxide emission limits in OAR 340-230-0320(1) must be determined using a 4-hour block arithmetic average.

(b) The owner or operator of an affected facility must install, calibrate, maintain, and operate a continuous emission monitoring system for measuring carbon monoxide at the combustor outlet and record the output of the system and must follow the procedures and methods specified in paragraphs (9)(a)(A) through (C) of this rule:

(A) The continuous emission monitoring system must be operated according to Performance Specification 4A in Appendix B of 40 CFR 60.

(B) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 4A in Appendix B of 40 CFR Part 60, carbon monoxide and oxygen (or carbon dioxide) data must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in subparagraphs (9)(b)(i) and (ii) of this rule. For affected facilities subject to the 100 parts per million dry volume carbon monoxide standard, the relative accuracy criterion of 5 parts per million dry volume is calculated as the absolute value of the mean difference between the reference method and continuous emission monitoring systems.

(i) For carbon monoxide, EPA Reference Methods 10, 10A, or 10B must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, or ASME PTC-19-10-1981--Part 10 (incorporated by reference, see 40 CFR 60.17), as applicable, must be used.

(C) The span value of the continuous emission monitoring system must be 125 percent of the maximum estimated hourly potential carbon monoxide emissions of the municipal waste combustor unit.

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(c) The 4-hour block daily arithmetic averages specified in subsection (9)(a) of this rule must be calculated from 1-hour arithmetic averages expressed in parts per million by volume corrected to 7 percent oxygen (dry basis). The 1-hour arithmetic averages must be calculated using the data points generated by the continuous emission monitoring system. At least two data points must be used to calculate each 1-hour arithmetic average.

(d) The owner or operator of an affected facility may request that compliance with the carbon monoxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(e) The procedures specified in paragraphs (9)(e)(A) through (D) of this rule must be used to determine compliance with load level requirements under OAR 340-230-0320(2).

(A) The owner or operator of an affected facility with steam generation capability must install, calibrate, maintain, and operate a steam flow meter or a feedwater flow meter; measure steam (or feedwater) flow in kilograms per hour (or pounds per hour) on a continuous basis; and record the output of the monitor. Steam (or feedwater) flow must be calculated in 4-hour block arithmetic averages.

(B) The method included in the "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1 -- 1964 (R1991)" section 4 (incorporated by reference, see 40 CFR 60.17) must be used for calculating the steam (or feedwater) flow required under paragraph (9)(c)(A) of this rule. The recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)," chapter 4 (incorporated by reference -- see 40 CFR 60.17) must be followed for design, construction, installation, calibration, and use of nozzles and orifices except as specified in paragraph (9)(e)(C) of this rule:

(C) Measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed.

(D) All signal conversion elements associated with steam (or feedwater flow) measurements must be calibrated according to the manufacturer's instructions before each dioxin/furan performance test, and at least once per year.

(f) To determine compliance with the maximum particulate matter control device temperature requirements under OAR 340-230-0320(3), the owner or operator of an affected facility must install, calibrate, maintain, and operate a device for measuring on a continuous basis the temperature of the flue gas stream at the inlet to each particulate matter control device utilized by the affected facility. Temperature must be calculated in 4-hour block arithmetic averages.

(g) The maximum demonstrated municipal waste combustor unit load must be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in OAR 340-230-0310(6) is achieved. The maximum demonstrated municipal waste combustor unit load shall be the highest 4-hour arithmetic average load achieved during four consecutive hours during the most recent test during which compliance with the dioxin/furan emission limit was achieved. If a subsequent dioxin/furan performance test is being performed on only one affected facility at the MWC plant, as provided in paragraph (7)(d)(C) of this rule, the owner or operator may elect to apply the same maximum municipal waste combustor unit load from the tested facility for all the similarly designed and operated affected facilities at the MWC plant.

(h) For each particulate matter control device employed at the affected facility, the maximum demonstrated particulate matter control device temperature must be determined during each performance test during which compliance with the dioxin/furan emission limit specified in OAR 340-230-0310(6) is achieved. The maximum demonstrated particulate matter control device temperature shall be the highest 4-hour arithmetic average temperature achieved at the particulate matter control device inlet during four consecutive hours during the most recent test during which compliance with the dioxin/furan limit was achieved. If a subsequent dioxin/furan performance test is being performed on only one affected facility at the MWC plant, as provided in paragraph (7)(d)(C) of this rule, the owner or operator may elect to apply the same maximum particulate matter control device temperature from the tested facility for all the similarly designed and operated affected facilities at the MWC plant.

(i) At a minimum, valid continuous emission monitoring system hourly averages must be obtained as specified in paragraphs (9)(i)(A) and (B) of this rule for at least 90 percent of the operating hours per calendar quarter and 95 percent of the operating hours per calendar year that the affected facility is combusting municipal solid waste.

(A) At least two data points per hour must be used to calculate each 1-hour arithmetic average.

(B) At a minimum, each carbon monoxide 1-hour arithmetic must be corrected to 7-percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(j) All valid continuous emission monitoring system data must be used in calculating the parameters specified under section (9) of this rule even if the minimum data requirements of subsection (9)(i) of this rule are not met. When carbon monoxide continuous emission data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data must be obtained using other monitoring systems as approved by the Department or EPA Reference Method 10 to provide, as necessary, the minimum valid emission data.

(k) Quarterly accuracy determinations and daily calibration drift tests for the carbon monoxide continuous emission monitoring system must be performed in accordance with **Procedure 1 in appendix F of 40 CFR part 60**.

(10) The procedures specified in subsections (10)(a) and (b) of this rule must be used for calculating municipal waste combustor unit capacity as defined by 40 CFR 60.51b.

(a) For municipal waste combustor units capable of combusting municipal solid waste continuously for a 24-hour period, municipal waste combustor unit capacity must be calculated based on 24 hours of operation at the maximum charging rate. The maximum charging rate must be determined as specified in paragraphs (10)(a)(A) and (B) of this rule, as applicable:

(A) For combustors that are designed based on heat capacity, the maximum charging rate must be calculated based on the maximum design heat input capacity of the unit and a heating value of 12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel.

(B) For combustors that are not designed based on heat capacity, the maximum charging rate shall be the maximum design charging rate.

(b) For batch feed municipal waste combustor units, municipal waste combustor unit capacity must be calculated as the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that could be processed in a 24-hour period. The maximum number of batches that could be processed in a 24-hour period is calculated as 24 hours divided by the design number of hours required to process one batch of municipal solid waste, and may include fractional batches (e.g., if one batch requires 16 hours, then 24/16, or 1.5 batches, could be combusted in a 24-hour period). For batch combustors that are designed based on heat capacity, the design heating value of 12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel must be used in calculating the municipal waste combustor unit capacity in megagrams per day of municipal solid waste.

(11) The procedures specified in subsections (11)(a) through (c) of this rule must be used for determining compliance with the fugitive ash emission limit under OAR 340-0230-0335.

(a) EPA Reference Method 22 must be used for determining compliance with the fugitive ash emission limit under OAR 340-0230-0335. The minimum observation time must be a series of three 1-hour observations. The observation period must include times when the facility is transferring ash from the municipal waste combustor unit to the area where ash is stored or loaded into containers or trucks.

(b) The average duration of visible emissions per hour must be calculated from the three 1-hour observations. The average must be used to determine compliance with OAR 340-0230-0335.

(c) The owner or operator of an affected facility must conduct a performance test for fugitive ash emissions on a calendar year basis (no less than 9 calendar months and no more than 15 months following the previous performance test; and must complete five performance tests in each 5-year period).

(12) The owner or operator of an affected facility where activated carbon injection is used to comply with the mercury emission limit under OAR 340-230-0310(3)(c), the dioxin/furan emission limits under OAR 340-230-0310(6), or the dioxin/furan emission level specified in paragraph (7)(d)(C) of this rule must follow the procedures specified in subsections (12)(a) through (d) of this rule.

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(a) During the performance tests for dioxins/furans and mercury, as applicable, the owner or operator must estimate an average carbon mass feed rate based on carbon injection system operating parameters such as the screw feeder speed, hopper volume, hopper refill frequency, or other parameters appropriate to the feed system being employed, as specified in paragraphs (12)(a)(A) and (B) of this rule.

(A) An average carbon mass feed rate in kilograms per hour or pounds per hour must be estimated during each performance test for mercury emissions.

(B) An average carbon mass feed rate in kilograms per hour or pounds per hour must be estimated during each performance test for dioxin/furan emissions, if applicable. If a subsequent dioxin/furan performance test is being performed on only one affected facility at the MWC plant, as provided in paragraph (7)(d)(C) of this rule, the owner or operator may elect to apply the same estimated average carbon mass feed rate from the tested facility for all the similarly designed and operated affected facilities at the MWC plant.

(b) During operation of the affected facility, the carbon injection system operating parameter(s) that are the primary indicator(s) of the carbon mass feed rate (e.g., screw feeder setting) must be averaged over a block 8-hour period, and the 8-hour average must equal or exceed the level(s) documented during the performance tests specified under paragraphs (12)(a)(A) and (B) of this rule, except as specified in paragraphs (12)(b)(A) and (B) of this rule.

(A) During the annual dioxin/furan or mercury performance test and the 2 weeks preceding the annual dioxin/furan or mercury performance test, no limit is applicable for average mass carbon feed rate if the provisions of paragraph (12)(b)(B) of this rule are met.

(B) The limit for average mass carbon feed rate may be waived in accordance with permission granted by the Administrator for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions.

(c) The owner or operator must estimate the total carbon usage of the plant (kilograms or pounds) for each calendar quarter by two independent methods, according to the procedures in paragraphs (12)(c)(A) and (B) of this rule.

(A) The weight of carbon delivered to the plant.

(B) Estimate the average carbon mass feed rate in kilograms per hour or pounds per hour for each hour of operation for each affected facility based on the parameters specified under subsection (12)(a) of this rule, and sum the results for all affected facilities at the plant for the total number of hours of operation during the calendar quarter.

(d) Pneumatic injection pressure or other carbon injection system operational indicator must be used to provide additional verification of proper carbon injection system operation. The operational indicator must provide an instantaneous visual and/or audible alarm to alert the operator of a potential interruption in the carbon feed that would not normally be indicated by direct monitoring of carbon mass feed rate (e.g., continuous weight loss feeder) or monitoring of the carbon system operating parameter(s) that are the indicator(s) of carbon mass feed rate (e.g., screw feeder speed). The carbon injection system operational indicator used to provide additional verification of carbon injection system operation, including basis for selecting the indicator and operator response to the indicator alarm, must be included in subsection (5)(f) of this rule of the site-specific operating manual required under OAR 340-230-0330(4).

(13) In place of periodic manual testing of mercury, cadmium, lead, or hydrogen chloride with EPA Reference Method 26, 26A, 29, or as an alternative ASTM D6784-02 (as applicable), affected facilities may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring emissions discharged to the atmosphere and record the output of the system. The option to use a continuous emission monitoring system for mercury takes effect on the date of approval of the site-specific monitoring plan required in subsection (13)(m) of this rule and section (14) of this rule. The option to use a continuous emission monitoring system for cadmium, lead, or hydrogen chloride takes effect on the date a final performance specification applicable to cadmium, lead, or hydrogen chloride monitor is published in the Federal Register or the date of approval of the site-specific monitoring plan required in subsection (13)(m) of this rule and section (14) of this rule. The owner or operator of an affected facility who elects to continuously monitor emissions instead of conducting manual performance testing must install, calibrate, maintain, and operate a continuous emission monitoring system and must comply with the requirements in subsections (13)(a) through (n) of this rule.

(a) Notify the Administrator and the Department one month before starting use of the system.

(b) Notify the Administrator and the Department one month before stopping use of the system.

(c) The monitor must be installed, evaluated, and operated in accordance with 40 CFR 60.13.

(d) The initial performance evaluation must be completed no later than 180 days after the date of initial startup of the affected facility, as specified under 40 CFR 60.8 or within 180 days of notification to the Administrator and the Department of use of the continuous monitoring system if the owner or operator was previously determining compliance by EPA Reference Method 26, 26A, 29, or as an alternative ASTM D6784-02 (as applicable) performance tests, whichever is later.

(e) The owner or operator may request that compliance with the emission limits be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(f) The owner or operator must conduct an initial performance test for emissions as required under 40 CFR 60.8. Compliance with the emission limits must be determined by using the continuous emission monitoring system specified in section (13) of this rule to measure emissions and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19, section 12.4.1.

(g) Compliance with the emission limits must be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data.

(h) Beginning on April 28, 2008 for mercury and on the date two years after final performance specifications for cadmium, lead or hydrogen chloride monitors are published in the Federal Register or the date two years after approval of a site-specific monitoring plan, valid continuous monitoring system hourly averages must be obtained as specified in paragraphs (13)(h)(A) and (B) of this rule for at least 90 percent of the operating hours per calendar quarter and 95 percent of the operating hours per calendar year that the affected facility is combusting municipal solid waste.

(A) At least two data points per hour must be used to calculate each 1-hour arithmetic average.

(B) Each 1-hour arithmetic average must be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(i) The 1-hour arithmetic averages required under subsection (13)(g) of this rule must be expressed in micrograms per dry standard cubic meter for mercury, cadmium, lead and parts per million dry volume for hydrogen chloride corrected to 7 percent oxygen (dry basis) and must be used to calculate the 24-hour daily arithmetic (block) average emission concentrations. The 1-hour arithmetic averages must be calculated using the data points required under 40 CFR 60.13(e)(2).

(j) All valid continuous emission monitoring system data must be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of subsection (13)(h) of this rule are not met.

(k) The continuous emission monitoring system for mercury must be operated according to Performance Specification 12A in 40 CFR part 60 appendix B or the approved site-specific monitoring plan.

(l) During each relative accuracy test run of the continuous emission monitoring system required by the performance specifications in subsection (13)(k) of this rule, mercury, cadmium, lead, hydrogen chloride, and oxygen (or carbon dioxide) data must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (13)(l)(A) through (C) of this rule.

(A) For mercury, cadmium, and lead, EPA Reference Method 29 or as an alternative ASTM D6784-02 must be used.

(B) For hydrogen chloride, EPA Reference Method 26 or 26A must be used.

(C) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, as applicable must be used.

(m) The owner or operator who elects to install, calibrate, maintain, and operate a continuous emission monitoring system for mercury, cadmium, lead, or hydrogen chloride must develop and implement a site-specific monitoring plan as specified in section (14) of this rule. The owner or operator who relies on a performance specification may refer to that document in addressing applicable procedures and criteria.

(n) When emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero



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and span adjustments, parametric monitoring data must be obtained by using other monitoring systems as approved by EPA.

(14) The owner or operator who elects to install, calibrate, maintain, and operate a continuous emission monitoring system for mercury, cadmium, lead, or hydrogen chloride must develop and submit for approval by EPA, a site-specific mercury, cadmium, lead, or hydrogen chloride monitoring plan that addresses the elements and requirements in subsections (14)(a) through (g) of this rule.

(a) Installation of the continuous emission monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device).

(b) Performance and equipment specifications for the sample interface, the pollutant concentration analyzer, and the data collection and reduction system.

(c) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(d) Provisions for periods when the continuous emission monitoring system is out of control as described in paragraphs (14)(d)(A) through (C) of this rule.

(A) A continuous emission monitoring system is out of control if either of the conditions in subparagraph (14)(d)(A)(i) or (ii) of this rule are met.

(i) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard; or

(ii) The continuous emission monitoring system fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit.

(B) When the continuous emission monitoring system is out of control as defined in paragraph (14)(d)(A) of this rule, the owner or operator of the affected source must take the necessary corrective action and must repeat all necessary tests that indicate that the system is out of control. The owner or operator must take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the continuous emission monitoring system is out of control, recorded data shall not be used in data averages and calculations or to meet any data availability requirements in subsection (13)(h) of this rule.

(C) The owner or operator of a continuous emission monitoring system that is out of control as defined in subsection (14)(d) of this rule must submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken in the annual or semiannual compliance reports required in OAR 340-230-0350(3) or (4).

(e) Ongoing data quality assurance procedures for continuous emission monitoring systems as described in paragraphs (14)(e)(A) and (B) of this rule.

(A) Develop and implement a continuous emission monitoring system quality control program. As part of the quality control program, the owner or operator must develop and submit to EPA for approval, upon request, a site-specific performance evaluation test plan for the continuous emission monitoring system performance evaluation required in paragraph (14)(e)(B) of this rule. In addition, each quality control program must include, at a minimum, a written protocol that describes procedures for each of the operations described in subparagraphs (14)(e)(A)(i) through (vi) of this rule.

(i) Initial and any subsequent calibration of the continuous emission monitoring system;

(ii) Determination and adjustment of the calibration drift of the continuous emission monitoring system;

(iii) Preventive maintenance of the continuous emission monitoring system, including spare parts inventory;

(iv) Data recording, calculations, and reporting;

(v) Accuracy audit procedures, including sampling and analysis methods; and

(vi) Program of corrective action for a malfunctioning continuous emission monitoring system.

(B) The performance evaluation test plan must include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external quality assurance program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data. The internal

quality assurance program must include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of continuous emission monitoring system performance, for example, plans for relative accuracy testing using the appropriate reference method. The external quality assurance program must include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator or the Department of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(f) Conduct a performance evaluation of each continuous emission monitoring system in accordance with the site-specific monitoring plan.

(g) Operate and maintain the continuous emission monitoring system in continuous operation according to the site-specific monitoring plan.

(15) In place of periodic manual testing of dioxin/furan or mercury with EPA Reference Method 23, 29, or as an alternative ASTM D6784-02 (as applicable), the owner or operator of an affected facility may elect to install, calibrate, maintain, and operate a continuous automated sampling system for determining emissions discharged to the atmosphere. This option takes effect on the date a final performance specification applicable to such continuous automated sampling systems is published in the Federal Register or the date of approval of a site-specific monitoring plan. The owner or operator of an affected facility who elects to use a continuous automated sampling system to determine emissions instead of conducting manual performance testing must install, calibrate, maintain, and operate the sampling system and conduct analyses in compliance with the requirements specified in subsections (15)(a) through (k) of this rule.

(a) Notify the Administrator and the Department one month before starting use of the system.

(b) Notify the Administrator and the Department one month before stopping use of the system.

(c) The initial performance evaluation must be completed within 180 days of notification to the Administrator and the Department of use of the continuous monitoring system if the owner or operator was previously determining compliance by manual performance testing using Method 23, 29, or as an alternative ASTM D6784-02 (as applicable), whichever is later.

(d) The owner or operator may request that compliance with the emission limits be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established as specified in subsection (2)(e) of this rule.

(e) The owner or operator must conduct an initial performance test for emissions as required under 40 CFR 60.8. Compliance with the emission limits must be determined by using the continuous automated sampling system specified in section (15) of this rule to collect integrated samples and analyze emissions for the time period specified in paragraphs (15)(e)(A) and (B) of this rule.

(A) For dioxin/furan, the continuous automated sampling system must collect an integrated sample over each 2-week period. The collected sample must be analyzed using EPA Reference Method 23.

(B) For mercury, the continuous automated sampling system must collect an integrated sample over each 24-hour daily period and the sample must be analyzed according to the applicable final performance specification or the approved site-specific monitoring plan required by section (16) of this rule.

(f) Compliance with the emission limits must be determined based on 2-week emission concentrations for dioxin/furan and on the 24-hour daily emission concentrations for mercury using samples collected at the system outlet. The emission concentrations must be expressed in nanograms per dry standard cubic meter (total mass) for dioxin/furan and micrograms per dry standard cubic meter for mercury, corrected to 7 percent oxygen (dry basis).

(g) Beginning on the date two years after the respective final performance specification for continuous automated sampling systems for dioxin/furan or mercury is published in the Federal Register or two years after approval of a site-specific monitoring plan, the continuous automated sampling system must be operated and collect emissions for at least 90 percent of the operating hours per calendar quarter and 95 percent of the operating hours per calendar year that the affected facility is combusting municipal solid waste.

(h) All valid data must be used in calculating emission concentrations.

(i) The continuous automated sampling system must be operated according to the final performance specification or the approved site-specific monitoring plan.

(j) The owner or operator who elects to install, calibrate, maintain, and operate a continuous automated sampling system for dioxin/furan or mercury must develop and implement a site-specific monitoring plan as specified in section (16) of this rule. The owner or operator who relies on a perform-

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ance specification may refer to that document in addressing applicable procedures and criteria.

(k) When emissions data are not obtained because of continuous automated sampling system breakdowns, repairs, quality assurance checks, or adjustments, parametric monitoring data must be obtained by using other monitoring systems as approved by EPA.

(16) The owner or operator who elects to install, calibrate, maintain, and operate a continuous automated sampling system for dioxin/furan or mercury must develop and submit for approval by EPA, a site-specific monitoring plan that has sufficient detail to assure the validity of the continuous automated sampling system data and that addresses the elements and requirements in subsections (16)(a) through (g) of this rule.

(a) Installation of the continuous automated sampling system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device).

(b) Performance and equipment specifications for the sample interface, the pollutant concentration analytical method, and the data collection system.

(c) Performance evaluation procedures and acceptance criteria.

(d) Provisions for periods when the continuous automated sampling system is malfunctioning or is out of control as described in paragraphs (16)(d)(A) through (C) of this rule.

(A) The site-specific monitoring plan must identify criteria for determining that the continuous automated sampling system is out of control. This includes periods when the sampling system is not collecting a representative sample or is malfunctioning, or when the analytical method does not meet site-specific quality criteria established in subsection (16)(e) of this rule.

(B) When the continuous automated sampling system is out of control as defined in paragraph (16)(d)(A) of this rule, the owner or operator must take the necessary corrective action and must repeat all necessary tests that indicate that the system is out of control. The owner or operator must take corrective action and conduct retesting until the performance requirements are within the applicable limits. The out-of-control period includes all hours that the sampling system was not collecting a representative sample or was malfunctioning, or hours represented by a sample for which the analysis did not meet the relevant quality criteria. Emissions data obtained during an out-of-control period shall not be used in determining compliance with the emission limits or to meet any data availability requirements in subsection (15)(h) of this rule.

(C) The owner or operator of a continuous automated sampling system that is out of control as defined in subsection (16)(d) of this rule must submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken in the annual or semiannual compliance reports required in OAR 340-230-0350(3) or (4).

(e) Ongoing data quality assurance procedures for continuous automated sampling systems as described in paragraphs (16)(e)(A) and (B) of this rule.

(A) Develop and implement a continuous automated sampling system and analysis quality control program. As part of the quality control program, affected facilities must develop and submit to EPA for approval, upon request, a site-specific performance evaluation test plan for the continuous automated sampling system performance evaluation required in paragraph (16)(e)(B) of this rule. In addition, each quality control program must include, at a minimum, a written protocol that describes procedures for each of the operations described in subparagraphs (16)(e)(A)(i) through (vii) of this rule.

(i) Correct placement, installation of the continuous automated sampling system such that the system is collecting a representative sample of gas;

(ii) Initial and subsequent calibration of flow such that the sample collection rate of the continuous automated sampling system is known and verifiable;

(iii) Procedures to assure representative (e.g., proportional or isokinetic) sampling;

(iv) Preventive maintenance of the continuous automated sampling system, including spare parts inventory and procedures for cleaning equipment, replacing sample collection media, or other servicing at the end of each sample collection period;

(v) Data recording and reporting, including an automated indicator and recording device to show when the continuous automated monitoring system is operating and collecting data and when it is not collecting data;

(vi) Accuracy audit procedures for analytical methods; and

(vii) Program of corrective action for a malfunctioning continuous automated sampling system.

(B) The performance evaluation test plan must include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external quality assurance program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data. The internal quality assurance program must include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of continuous automated sampling system performance, for example, plans for relative accuracy testing using the appropriate reference method in subsection (15)(c) of this rule, and an assessment of quality of analysis results. The external quality assurance program must include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator or the Department of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(f) Conduct a performance evaluation of each continuous automated sampling system in accordance with the site-specific monitoring plan.

(g) Operate and maintain the continuous automated sampling system in continuous operation according to the site-specific monitoring plan.

(17) Continuous monitoring for opacity, sulfur dioxide, nitrogen oxides, carbon monoxide, and diluent gases (oxygen or carbon dioxide) must be conducted in accordance with the Department's Continuous Monitoring Manual and the specific requirements of this rule. If at any time there is a conflict between the Department's Continuous Monitoring Manual and the federal requirements contained in **40 CFR 60.13, Appendix B and Appendix F**, the federal requirements must govern.

[ED NOTE: Equations referenced are available from the agency.]

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.02

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0990; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-230-0350

### Recordkeeping and Reporting

(1) The owner or operator of an affected facility subject to the standards contained in OAR 340-230-0310 through 340-230-0335 must maintain records of the information specified in subsections (1)(a) through (l) of this rule, as applicable, for each affected facility for a period of at least 5 years. The information must be available for submittal to the Department or for review onsite by an inspector.

(a) The calendar date of each record.

(b) The emission concentrations and parameters measured using continuous monitoring systems as specified in paragraphs (1)(b)(A) and (B) of this rule:

(A) The measurements specified in subparagraphs (1)(b)(A)(i) through (v) of this rule must be recorded and be available for submittal to the Department or review on-site by Department inspector:

(i) All 6-minute average opacity levels as specified under OAR 340-230-0340(3).

(ii) All 1-hour average sulfur dioxide emission concentrations as specified under OAR 340-230-0340(5).

(iii) All 1-hour average nitrogen oxides emission concentrations as specified under OAR 340-230-0340(8).

(iv) All 1-hour average carbon monoxide emission concentrations, municipal waste combustor unit load measurements (if applicable), and particulate matter control device inlet temperatures as specified under OAR 340-230-0340(9).

(v) For owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride emissions instead of conducting performance testing using EPA manual test methods, all 1-hour average particulate matter, cadmium, lead, mercury, or hydrogen chloride emission concentrations as specified under OAR 340-230-0340(13).

(B) The average concentrations and percent reductions, as applicable, specified in subparagraphs (1)(b)(B)(i) through (vi) of this rule must be computed and recorded, and must be available for submittal to the Department or review on-site by Department inspector.

(i) All 24-hour daily geometric average sulfur dioxide emission concentrations and all 24-hour daily geometric average percent reductions in sulfur dioxide emissions as specified under OAR 340-230-0340(5).

(ii) All 24-hour daily arithmetic average nitrogen oxides emission concentrations as specified under OAR 340-230-0340(8).

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(iii) All 4-hour block or 24-hour daily arithmetic average carbon monoxide emission concentrations, as applicable, as specified under OAR 340-230-0340(9).

(iv) All 4-hour block arithmetic average municipal waste combustor unit load levels (if applicable) and particulate matter control device inlet temperatures as specified under OAR 340-230-0340(9).

(v) For owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride emissions instead of conducting performance testing using EPA manual test methods, all 24-hour daily arithmetic average particulate matter, cadmium, lead, mercury, or hydrogen chloride emission concentrations as specified under OAR 340-230-0340(13).

(vi) For owners and operators who elect to use a continuous automated sampling system to monitor mercury or dioxin/furan instead of conducting performance testing using EPA manual test methods, all integrated 24-hour mercury concentrations or all integrated 2-week dioxin/furan concentrations as specified under OAR 340-230-0340(15).

(c) Identification of the calendar dates when any of the average emission concentrations, percent reductions, or operating parameters recorded under subparagraphs (1)(b)(B)(i) through (vi) of this rule, or the opacity levels recorded under subparagraph (1)(b)(A)(i) of this rule are above the applicable limits, with reasons for such exceedances and a description of corrective actions taken.

(d) For affected facilities that apply activated carbon for mercury or dioxin/furan control, the records specified in paragraphs (1)(d)(A) through (E) of this rule:

(A) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated as specified under OAR 340-230-0340(12)(a)(A) during each mercury emissions performance test, with supporting calculations.

(B) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated as specified under OAR 340-230-0340(12)(a)(B) during each dioxin/furan emissions performance test, with supporting calculations.

(C) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated for each hour of operation as specified under OAR 340-230-0340(12)(c)(B), with supporting calculations.

(D) The total carbon usage for each calendar quarter estimated as specified under OAR 340-230-0340(12)(c), with supporting calculations.

(E) Carbon injection system operating parameter data for the parameter(s) that are the primary indicator(s) of carbon feed rate (e.g., screw feeder speed).

(e) Identification of the calendar dates and times (hours) for which valid hourly data specified in paragraphs (1)(e)(A) through (F) of this rule have not been obtained, or continuous automated sampling systems were not operated as specified in paragraph (1)(e)(G) of this rule, including reasons for not obtaining the data and a description of corrective actions taken.

(A) Sulfur dioxide emissions data;

(B) Nitrogen oxides emissions data;

(C) Carbon monoxide emissions data;

(D) Municipal waste combustor unit load data;

(E) Particulate matter control device temperature data; and

(F) For owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride emissions instead of performance testing by EPA manual test methods, particulate matter, cadmium, lead, mercury, or hydrogen chloride emissions data.

(G) For owners and operators who elect to use continuous automated sampling systems for dioxins/furans or mercury as allowed under OAR 340-230-0340(15) and (16), dates and times when the sampling systems were not operating or were not collecting a valid sample.

(f) Identification of each occurrence that sulfur dioxide emissions data, nitrogen oxides emissions data, particulate matter emissions data, cadmium emissions data, lead emissions data, mercury emissions data, hydrogen chloride emissions data, or dioxin/furan emissions data (for owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride, or who elect to use continuous automated sampling systems for dioxin/furan or mercury emissions, instead of conducting performance testing using EPA manual test methods) or operational data (i.e., carbon monoxide emissions, unit load, and particulate matter control device temperature) have been excluded from the calculation of average emission concentrations or parameters, and the reasons for excluding the data.

(g) The results of daily drift tests and quarterly accuracy determinations for sulfur dioxide, nitrogen oxides, and carbon monoxide continuous

emission monitoring systems, as required by 40 CFR part 60 appendix F, procedure 1.

(h) The test reports documenting the results of the initial performance test and all annual performance tests listed in paragraphs (1)(h)(A) and (B) of this rule must be recorded along with supporting calculations:

(A) The results of the initial performance test and all annual performance tests conducted to determine compliance with the particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission limits.

(B) For the initial dioxin/furan performance test and all subsequent dioxin/furan performance tests recorded under paragraph (1)(h)(A) of this rule, the maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device temperature (for each particulate matter control device).

(i) An owner or operator who elects to continuously monitor emissions instead of performance testing by EPA manual methods must maintain records specified in paragraphs (1)(i)(A) through (C) of this rule.

(A) For owners and operators who elect to continuously monitor particulate matter instead of conducting performance testing using EPA manual test methods, as required under 40 CFR part 60 appendix F, procedure 2, the results of daily drift tests and quarterly accuracy determinations for particulate matter.

(B) For owners and operators who elect to continuously monitor cadmium, lead, mercury, or hydrogen chloride instead of conducting EPA manual test methods, the results of all quality evaluations, such as daily drift tests and periodic accuracy determinations, specified in the approved site-specific performance evaluation test plan required by OAR 340-230-0340(14)(e).

(C) For owners and operators who elect to use continuous automated sampling systems for dioxin/furan or mercury, the results of all quality evaluations specified in the approved site-specific performance evaluation test plan required by OAR 340-230-0340(16)(e).

(j) Training records specified in paragraphs (1)(j)(A) through (D) of this rule.

(A) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by OAR 340-230-0330(1), including the dates of initial and renewal certifications and documentation of current certification.

(B) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by OAR 340-230-0330(2), including the dates of initial and renewal certifications and documentation of current certification.

(C) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustor operator training course or a State-approved equivalent course, including documentation of training completion.

(D) Records of when a certified operator is temporarily off site. Include two main items:

(i) If the certified chief facility operator and certified shift supervisor are off site for more than 12 hours, but for 2 weeks or less, and no other certified operator is on site, record the dates that the certified chief facility operator and certified shift supervisor were off site.

(ii) When all certified chief facility operators and certified shift supervisors are off site for more than 2 weeks and no other certified operator is on site, keep records of four items:

(I) Time of day that all certified persons are off site.

(II) The conditions that cause those people to be off site.

(III) The corrective actions taken by owner or operator of the affected facility to ensure a certified chief facility operator or certified shift supervisor is on site as soon as practicable.

(IV) Copies of the written reports submitted every 4 weeks that summarize the actions taken by the owner or operator of the affected facility to ensure that a certified chief facility operator or certified shift supervisor will be on site as soon as practicable.

(k) Records showing the names of persons who have completed a review of the operating manual as required by OAR 340-230-0330(5), including the date of the initial review and subsequent annual reviews.

(l) For affected facilities that apply activated carbon for mercury or dioxin/furan control:

(A) Identification of the calendar dates when the average carbon mass feed rates were less than either of the hourly carbon feed rates estimated



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during performance tests for mercury or dioxin/furan emissions with reasons for such feed rates and a description of corrective actions taken.

(B) Identification of the calendar dates when the carbon injection system operating parameter(s) that are the primary indicator(s) of carbon mass feed rate (e.g., screw feeder speed) recorded under OAR 340-230-0340(12)(a)(A) and (B) are below the level(s) estimated during the performance tests, with reasons for such occurrences and a description of corrective actions taken.

(2) The owner or operator of an affected facility must submit the information specified in subsections (2)(a) through (f) of this rule in a performance test report within 60 days following the completion of each performance test.

(a) The performance test data as recorded under subparagraphs (1)(b)(B)(i) through (iv) of this rule for each performance test for sulfur dioxide, nitrogen oxide, carbon monoxide, municipal waste combustor unit load level, and particulate matter control device inlet temperature.

(b) The test report documenting the performance test recorded under subsection (1)(h) of this rule for particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, fugitive ash emissions.

(c) The performance evaluation of the continuous emission monitoring systems using the applicable performance specifications in 40 CFR 60 appendix B.

(d) The maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device inlet temperature(s) established during the dioxin/furan performance test.

(e) For affected facilities that apply activated carbon injection for mercury control, the owner or operator must submit the average carbon mass feed rate recorded during the mercury performance test.

(f) For affected facilities that apply activated carbon injection for dioxin/furan control, the owner or operator must submit the average carbon mass feed rate recorded during the dioxin/furan performance test.

(3) The owner or operator of an affected facility must submit semi-annual reports that includes the information specified in subsections (3)(a) through (e) of this rule, as applicable, no later than July 30 for the first six months of each calendar year and February 1 for the second six months of each calendar year.

(a) A summary of data collected for all pollutants and parameters regulated under this rule, which includes the information specified in paragraphs (3)(a)(A) through (E) of this rule:

(A) A list of the particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission levels achieved during any performance tests conducted during the reporting period.

(B) A list of the highest emission level recorded for sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, cadmium, lead, mercury, hydrogen chloride, and dioxin/furan (for owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, hydrogen chloride, and dioxin/furan emissions instead of conducting performance testing using EPA manual test methods), municipal waste combustor unit load level, and particulate matter control device inlet temperature based on the data recorded during the reporting period.

(C) List the highest opacity level measured based on the data recorded during the reporting period.

(D) Periods when valid data were not obtained as described in subparagraphs (3)(a)(D)(i) through (iii) of this rule.

(i) The total number of hours per calendar quarter and hours per calendar year that valid data for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load, or particulate matter control device temperature data were not obtained based on the data recorded during the reporting period.

(ii) For owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, and hydrogen chloride emissions instead of conducting performance testing using EPA manual test methods, the total number of hours per calendar quarter and hours per calendar year that valid data for particulate matter, cadmium, lead, mercury, and hydrogen chloride were not obtained based on the data recorded during the reporting period. For each continuously monitored pollutant or parameter, the hours of valid emissions data per calendar quarter and per calendar year expressed as a percent of the hours per calendar quarter or year that the affected facility was operating and combusting municipal solid waste.

(iii) For owners and operators who elect to use continuous automated sampling systems for dioxin/furan or mercury, the total number of hours per calendar quarter and hours per calendar year that the sampling systems were not operating or were not collecting a valid sample based on the data recorded during the reporting period. Also, the number of hours during which the continuous automated sampling system was operating and collecting a valid

sample as a percent of hours per calendar quarter or year that the affected facility was operating and combusting municipal solid waste.

(E) Periods when valid data were excluded from the calculation of average emission concentrations or parameters as described subparagraphs (3)(a)(E)(i) through (iii) of this rule.

(i) The total number of hours that data for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load, and particulate matter control device temperature were excluded from the calculation of average emission concentrations or parameters based on the data recorded during the reporting period.

(ii) For owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride emissions instead of conducting performance testing using EPA manual test methods, the total number of hours that data for particulate matter, cadmium, lead, mercury, or hydrogen chloride were excluded from the calculation of average emission concentrations or parameters based on the data recorded during the reporting period.

(iii) For owners and operators who elect to use continuous automated sampling systems for dioxin/furan or mercury, the total number of hours that data for mercury and dioxin/furan were excluded from the calculation of average emission concentrations or parameters based on the data recorded during the reporting periods.

(b) The summary of data reported under subsection (3)(a) of this rule must also provide the types of data specified in subsection (3)(a)(A) through (E) of this rule for the calendar year preceding the year being reported, in order to provide the Department with a summary of the performance of the affected facility over a 2-year period.

(c) The summary of data including the information specified in subsections (3)(a) and (b) of this rule must highlight any emission or parameter levels that did not achieve the emission or parameter limits specified by OAR 340-230-0310 through 340-230-0320.

(d) A notification of intent to begin the reduced dioxin/furan performance testing schedule specified in OAR 340-230-0340(7)(d)(C) during the following calendar year and notification of intent to apply the average carbon mass feed rate and associated carbon injection system operating parameter levels as established in OAR 340-230-0340(12) to similarly designed and equipped units on site.

(e) Documentation periods when all certified chief facility operators and certified shift supervisors are off site for more than 12 hours.

(4) The owner or operator of an affected facility must submit a semi-annual report that includes the information specified in subsections (4)(a) through (e) of this rule for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit by July 30 for the first six months of each calendar year and February 1 for the second six months of each calendar year.

(a) The semiannual report must include information recorded under subsection (1)(c) of this rule for sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, cadmium, lead, mercury, hydrogen chloride, dioxin/furan (for owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride, or that elect to use continuous automated sampling systems for dioxin/furan or mercury emissions, instead of conducting performance testing using EPA manual test methods), municipal waste combustor unit load level, particulate matter control device inlet temperature, and opacity.

(b) For each date recorded under subsection (1)(c) of this rule and reported, as required by subsection (4)(a) of this rule, the semiannual report must include the sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, particulate matter control device inlet temperature, or opacity data, as applicable, recorded under subparagraphs (1)(b)(A)(i) and (1)(b)(B)(i) through (iv) of this rule, as applicable.

(c) If the test reports recorded under subsection (1)(h) of this rule document any particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission levels that were above the applicable pollutant limits, the semiannual report must include a copy of the test report documenting the emission levels and the corrective actions taken.

(d) The semiannual report must include the information recorded under subparagraph (1)(l)(B) of this rule for the carbon injection system operating parameter(s) that are the primary indicator(s) of carbon mass feed rate.

(e) For each operating date reported as required under subsection (4)(d) of this rule, the semiannual report must include the carbon feed rate data recorded under paragraph (1)(d)(C) of this rule.

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(5) All reports specified under sections (2) through (4) of this rule must be submitted as a paper copy, postmarked on or before the submittal dates specified, and maintained onsite as a paper copy for a period of 5 years.

(6) All records specified under section (1) of this rule must be maintained onsite in either paper copy or computer-readable format, unless an alternative format is approved by the Department.

(7) If the owner or operator of an affected facility would prefer to select a different annual or semiannual date for submitting the periodic reports required under paragraphs (3) and (4) of this rule, then the dates may be changed in an Oregon Title V Operating Permit by mutual agreement between the owner or operator and the Department according to the procedures specified in 40 CFR 60.19(c).

(8) Owners and operators who elect to continuously monitor particulate matter, cadmium, lead, mercury, or hydrogen chloride, or who elect to use continuous automated sampling systems for dioxin/furan or mercury emissions, instead of conducting performance testing using EPA manual test methods must notify the Administrator and the Department one month prior to starting or stopping use of the particulate matter, cadmium, lead, mercury, hydrogen chloride, and dioxin/furan continuous emission monitoring systems or continuous automated sampling systems.

(9) Additional recordkeeping and reporting requirements for affected facilities with continuous cadmium, lead, mercury, or hydrogen chloride monitoring systems. In addition to complying with the requirements specified in sections (1) through (8) of this rule, the owner or operator of an affected source who elects to install a continuous emission monitoring system for cadmium, lead, mercury, or hydrogen chloride as specified in OAR 340-230-0340(13), must maintain the records in subsections (9)(a) through (j) of this rule and report the information in subsections (9)(k) and (l) of this rule, relevant to the continuous emission monitoring system:

(a) All required continuous emission monitoring measurements (including monitoring data recorded during unavoidable continuous emission monitoring system breakdowns and out-of-control periods).

(b) The date and time identifying each period during which the continuous emission monitoring system was inoperative except for zero (low-level) and high-level checks.

(c) The date and time identifying each period during which the continuous emission monitoring system was out of control, as defined in OAR 340-230-0340(14)(d).

(d) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the standard, that occurs during startups, shutdowns, and malfunctions of the affected source.

(e) The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the standard, that occurs during periods other than startups, shutdowns, and malfunctions of the affected source;

(f) The nature and cause of any malfunction (if known).

(g) The corrective action taken to correct any malfunction or preventive measures adopted to prevent further malfunctions.

(h) The nature of the repairs or adjustments to the continuous emission monitoring system that was inoperative or out of control.

(i) All procedures that are part of a quality control program developed and implemented for the continuous emission monitoring system under OAR 340-230-0340(14).

(j) When more than one continuous emission monitoring system is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator must report the results as required for each continuous emission monitoring system.

(k) Submit to the Department for approval, the site-specific monitoring plan required by OAR 340-230-0340(13)(m) and (14), including the site-specific performance evaluation test plan for the continuous emission monitoring system required by OAR 340-230-0340(14)(e). The owner or operator must maintain copies of the site-specific monitoring plan on record for the life of the affected source to be made available for inspection, upon request, by the Department. If the site-specific monitoring plan is revised and approved, the owner or operator must keep previous (i.e., superseded) versions of the plan on record to be made available for inspection, upon request, by the Department, for a period of 5 years after each revision to the plan.

(l) Submit information concerning all out-of-control periods for each continuous emission monitoring system, including start and end dates and hours and descriptions of corrective actions taken, in the annual or semiannual report required in sections (3) or (4) of this rule.

(10) Additional recordkeeping and reporting requirements for affected facilities with continuous automated sampling systems for dioxin/furan or mercury monitoring. In addition to complying with the requirements specified in sections (1) through (8) of this rule, the owner or operator of an affected facility who elects to install a continuous automated sampling system for dioxin/furan or mercury, as specified in OAR 340-230-0340(16), must maintain the records in subsections (10)(a) through (j) of this rule and report the information in subsections (10)(k) and (l) of this rule, relevant to the continuous automated sampling system:

(a) All required 24-hour integrated mercury concentration or 2-week integrated dioxin/furan concentration data (including any data obtained during unavoidable system breakdowns and out-of-control periods);

(b) The date and time identifying each period during which the continuous automated sampling system was inoperative;

(c) The date and time identifying each period during which the continuous automated sampling system was out of control, as defined in OAR 340-230-0340(16)(d);

(d) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the standard, that occurs during startups, shutdowns, and malfunctions of the affected source;

(e) The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the standard, that occurs during periods other than startups, shutdowns, and malfunctions of the affected source;

(f) The nature and cause of any malfunction (if known);

(g) The corrective action taken to correct any malfunction or preventive measures adopted to prevent further malfunctions;

(h) The nature of the repairs or adjustments to the continuous automated sampling system that was inoperative or out of control;

(i) All procedures that are part of a quality control program developed and implemented for the continuous automated sampling system under OAR 340-230-0340(16);

(j) When more than one continuous automated sampling system is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator must report the results as required for each system.

(k) Submit to the Department for approval, the site-specific monitoring plan required by OAR 340-230-0340(15)(k) and (16) including the site-specific performance evaluation test plan for the continuous emission monitoring system required by OAR 340-230-0340(16)(e). The owner or operator must maintain copies of the site-specific monitoring plan on record for the life of the affected source to be made available for inspection, upon request, by the Department. If the site-specific monitoring plan is revised and approved, the owner or operator must keep previous (i.e., superseded) versions of the plan on record to be made available for inspection, upon request, by the Department, for a period of 5 years after each revision to the plan.

(l) Submit information concerning all out-of-control periods for each continuous automated sampling system, including start and end dates and hours and descriptions of corrective actions taken in the annual or semiannual reports required in sections (3) or (4) of this rule.

(11) For affected facilities installing additional controls, the owner or operator must submit to the Department semi-annual progress reports on July 30 for the first six months of each calendar year and February 1 for the second six months of each calendar year.

(12) The owner or operator of an affected facility subject to OAR 340-230-0300 through 340-230-0350 must maintain records of and submit the following information with any Notice of Construction required by OAR 340-210-0200 through 340-210-0220 or Notice of Approval required by 340-218-0190:

(a) Intent to construct;

(b) Planned initial startup date;

(c) The types of fuels that the owner or operator plans to combust in the municipal waste combustor; and

(d) The municipal waste combustor unit capacity and supporting capacity calculations prepared in accordance with OAR 340-230-0340(10).

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 4-2003, f. & cert. ef. 2-06-03 DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-1000; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08

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## 340-230-0359

### Compliance Schedule

(1) Compliance with the revised April 28, 2009 emission limits in OAR 340-230-0310 is required as expeditiously as practicable, but not later than April 28, 2009, except as provided in section (2) of the rule.

(2) The owner or operator of an affected facility who is planning an extensive emission control system upgrade may petition the Administrator for a longer compliance schedule and must demonstrate to the satisfaction of the Administrator the need for additional time. If approved, the schedule may exceed the schedule in section (1) of this rule, but cannot exceed May 10, 2011.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-238-0040

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the DEQ's satisfaction to, in specific cases, produce results adequate for determination of compliance.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in **Internal Revenue Service (IRS) Publication 534** and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2008 edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Construction" means fabrication, erection, or installation of a facility.

(8) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Protection Agency.

(9) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(10) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(11) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(12) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(13) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.

(14) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(15) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(16) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(17) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(18) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(19) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.

(20) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(21) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(22) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(23) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(24) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

(25) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

(26) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-238-0060

### Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts A, D through XX, BBB through AAAA, CCCC, EEEE, IIII, and KKKK** are by this reference adopted and incorporated herein, and **40 CFR Part 60 Subpart OOO** is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) 40 CFR Part 60 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;



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(b) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(c) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(d) Subpart Db — Industrial-commercial-institutional steam generating units;

(e) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(f) Subpart E — Incinerators;

(g) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(h) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(i) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(j) Subpart F — Portland cement plants;

(k) Subpart G — Nitric acid plants;

(l) Subpart H — Sulfuric acid plants;

(m) Subpart I — Hot mix asphalt facilities;

(n) Subpart J — Petroleum refineries;

(o) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

(p) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(q) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(r) Subpart L — Secondary lead smelters;

(s) Subpart M — Secondary brass and bronze production plants;

(t) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(u) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(v) Subpart O — Sewage treatment plants;

(w) Subpart P — Primary copper smelters;

(x) Subpart Q — Primary Zinc smelters;

(y) Subpart R — Primary lead smelters;

(z) Subpart S — Primary aluminum reduction plants;

(aa) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(bb) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(cc) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(dd) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(ee) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(ff) Subpart Y — Coal preparation plants;

(gg) Subpart Z — Ferroalloy production facilities;

(hh) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(ii) Subpart AAa — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;

(jj) Subpart BB — Kraft pulp mills;

(kk) Subpart CC — Glass manufacturing plants;

(ll) Subpart DD — Grain elevators.

(mm) Subpart EE — Surface coating of metal furniture;

(nn) Subpart GG — Stationary gas turbines;

(oo) Subpart HH — Lime manufacturing plants;

(pp) Subpart KK — Lead-acid battery manufacturing plants;

(qq) Subpart LL — Metallic mineral processing plants;

(rr) Subpart MM — Automobile and light-duty truck surface coating operations;

(ss) Subpart NN — Phosphate rock plants;

(tt) Subpart PP — Ammonium sulfate manufacture;

(uu) Subpart QQ — Graphic arts industry: publication rotogravure printing;

(vv) Subpart RR — pressure sensitive tape and label surface coating operations;

(ww) Subpart SS — Industrial surface coating: large appliances;

(xx) Subpart TT — Metal coil surface coating;

(yy) Subpart UU — Asphalt processing and asphalt roofing manufacture;

(zz) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(aaa) Subpart VVa — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(bbb) Subpart WW — Beverage can surface coating industry;

(ccc) Subpart XX — Bulk gasoline terminals;

(ddd) Subpart BBB — Rubber tire manufacturing industry;

(eee) Subpart DDD — Volatile organic compound (VOC) emissions for the polymer manufacture industry;

(fff) Subpart FFF — Flexible vinyl and urethane coating and printing;

(ggg) Subpart GGG — Equipment leaks of VOC in petroleum refineries;

(hhh) Subpart GGGa — Equipment leaks of VOC in petroleum refineries;

(iii) Subpart HHH — Synthetic fiber production facilities;

(jjj) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;

(kkk) Subpart JJJ — Petroleum dry cleaners;

(lll) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;

(mmm) Subpart LLL — Onshore natural gas processing; SO<sub>2</sub> emissions;

(nnn) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;

(ooo) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);

(ppp) Subpart PPP — Wool fiberglass insulation manufacturing plants;

(qqq) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;

(rrr) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(sss) Subpart SSS — Magnetic tape coating facilities;

(ttt) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;

(uuu) Subpart UUU — Calciners and dryers in mineral industries;

(vvv) Subpart VVV — Polymeric coating of supporting substrates facilities;

(www) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;

(xxx) Subpart AAAA — Small municipal waste combustion units;

(yyy) Subpart CCCC — Commercial and industrial solid waste incineration units;

(zzz) Subpart EEEE — Other solid waste incineration units;

(aaaa) Subpart IIII — Stationary compression ignition combustion engines;

(bbbb) Subpart JJJJ — Stationary spark ignition internal combustion engines;

(cccc) Subpart KKKK — Stationary combustion turbines.

Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-238-0090 Delegation

(1) The Lane Regional Air Protection Agency (LRAPA) is authorized to implement and enforce, within its boundaries, the provisions of this division.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in this division. LRAPA may implement and enforce provisions authorized by the Commission in place

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of any or all of this division upon receipt of delegation from EPA. Delegation may be withdrawn for cause by the Commission.

Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0520; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-242-0520

### General Provisions

(1) No owner and/or operator of a gasoline-dispensing facility shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at gasoline-dispensing facilities located in Clackamas, Multnomah or Washington Counties whose annual throughput exceeds 600,000 gallons, unless the gasoline-dispensing facility is equipped with a stage II vapor collection system which must be approved by the Department before it is installed.

[NOTES: -1- Underground piping requirements are described in OAR 340-150-0001 through 340-150-0003 and 40 CFR 280.20(d). Systems installed according to American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System" or Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" or American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System" are considered approved systems.

-2- Above-ground stage II equipment requirements are based on systems recently approved in other states with established stage II program. See the Oregon Department of Environmental Quality, Air Quality Division, for the list of approved equipment. Any other proposed equivalent systems must be submitted to the Department of Environmental Quality, Air Quality Division, for approval before installation.]

(2) Owners and/or operators of gasoline-dispensing facilities subject to stage II vapor collection requirements must:

(a) Install all necessary stage II vapor collection and control systems, and make any modifications necessary to comply with the requirements;

(b) Provide adequate training and written instructions to the operator of the affected gasoline-dispensing facility and the gasoline transport vehicle;

(c) Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage II vapor collection systems; and

(d) Connect and ensure proper operation of the stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.

(3) Approval of a stage II vapor collection system by the Department does not relieve the owner and/or operator of the responsibility to comply with other applicable codes and regulations pertaining to fire prevention, weights and measures and safety matters.

(4) Regarding installation and testing of piping for stage II vapor collection systems:

(a) Piping shall be installed in accordance with standards in OAR 340 division 150;

(b) Piping shall be installed by a licensed installation service provider pursuant to OAR 340 division 160; and

(c) Piping shall be tested prior to being placed into operation by an installation or tank tightness testing service provider licensed pursuant to OAR 340 division 160.

**NOTE:** Test methods are based on methods used in other states with established stage II programs. See the Oregon Department of Environmental Quality, Air Quality Division, for copies of the approved test methods.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1994, f. & cert. ef. 11-22-94; DEQ 16-1996, f. & cert. ef. 8-14-96; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0402; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0020

### Delegation of Authority

(1) The Lane Regional Air Protection Agency (LRAPA) is authorized to implement and enforce, within its boundaries, this Division.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in this Division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this Division upon receipt of delegation from EPA or approval of such provisions under Section 112(1) of the Federal Clean Air Act. Authorization provided under this section may be withdrawn for cause by the Commission.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0110; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0030

### Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.

(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2008 edition.

(6) "Commission" means the Oregon Environmental Quality Commission.

(7) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or the Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) The Department determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

(8) "Department" means the Department of Environmental Quality.

(9) "Director" means the Director of the Department or Regional Agency, and authorized deputies or officers.

(10) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

## ADMINISTRATIVE RULES

(11) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(12) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(13) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in paragraph (d) of this definition, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable;

(c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA;

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or OAR 340 division 210, or for determining the applicability of a New Source Performance Standard (NSPS).

(14) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(15) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(16) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(17) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(18) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.

(19) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediate previous load.

(20) "Gasoline dispensing facility (GDF)" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle.

(21) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(22) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(23) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(24) "Monthly throughput" means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.

(25) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(26) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdi-

vision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(27) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(28) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(29) "Regional Agency" means Lane Regional Air Protection Agency.

(30) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-200-0400 or 340-244-0230; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(31) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(32) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.

(33) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(34) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.

(35) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(36) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(37) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(38) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.

(39) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(40) "Stationary Source":

(a) As used in OAR 340 division 244 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(b) As used in OAR 340-244-0230 means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(A) That belong to the same industrial group;

(B) That are located on one or more contiguous properties;

(C) That are under the control of the same person (or persons under common control); and

(D) From which an accidental release may occur.

(41) "Submerged filling" means, for the purposes of this subpart, the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0242(2) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.



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(42) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(43) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0100

### Applicability

The requirements of **40 CFR Part 63, Subpart D** apply to an owner or operator of an existing source who wishes to obtain a compliance extension and an alternative emission limit from a standard issued under Section 112(d) of the FCAA. Any owner or operator of a facility who elects to comply with a compliance extension and alternative emission limit issued under this section must complete a permit application as prescribed in 40 CFR 63.77.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.310

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0300; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0210

### Emissions Limitation for Existing Sources

(1) Federal MACT. Existing major and area sources must comply with the applicable emissions standards for existing sources promulgated by the EPA pursuant to section 112(d), section 112(n), or section 129 of the FCAA and adopted by rule within this Division.

(2) State MACT. If the EPA fails to meet its schedule for promulgating a MACT standard for a source category or subcategory, the Department must approve HAP emissions limitations for existing major sources within that category or subcategory according to 40 CFR Part 63, Subpart B.

(a) The owner or operator of each existing major source within that category will file permit applications in accordance with OAR 340-218-0040 and 40 CFR Part 63, Subpart B.

(b) If, after a permit has been issued, the EPA promulgates a MACT standard applicable to a source that is more stringent than the one established pursuant to this section, the Department may revise the permit upon the next renewal to reflect the standard promulgated by the EPA. The source will be given a reasonable time to comply, but no longer than 8 years after the standard is promulgated;

(c) The Department will not establish a case-by-case State MACT:

(A) For existing solid waste incineration units where an emissions standard will be established for these units by the EPA pursuant to section 111 of the FCAA. These sources are subject to applicable emissions standards under OAR chapter 340, division 230; or

(B) For existing major HAP sources where an emissions standard or alternative control strategy will be established by the EPA pursuant to section 112(n) of the FCAA.

(3) Compliance schedule:

(a) The owner or operator of the source must comply with the emission limitation:

(A) Within the time frame established in the applicable Federal MACT standard, but in no case later than three years from the date of federal promulgation of the applicable MACT requirements; or

(B) Within the time frame established by the Department where a state-determined MACT has been established or a case-by-case determination has been made.

(b) Notwithstanding the requirements of this section, no existing source that has installed Best Available Control Technology or has been required to meet Lowest Achievable Emission Rate before the promulgation of a federal MACT applicable to that emissions unit is required to comply with such MACT standard until 5 years after the date on which such installation or reduction has been achieved, as determined by the Department.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.310

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 7-1998, f. & cert. ef. 5-5-98; DEQ 18-1998, f. & cert. ef. 10-5-98, Renumbered from 340-032-2500; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0505; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0220

### Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, and Y through FF and 40 CFR Part 63, Subparts A, F through BBBB, DDDDD through GGGGG, and LLLLL through TTTTT** are adopted by reference and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "Department" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart C — Beryllium;

(c) Subpart D — Beryllium Rocket Motor Firing;

(d) Subpart E — Mercury;

(e) Subpart F — Vinyl Chloride;

(f) Subpart J — Equipment Leaks (Fugitive Emission Sources) of Benzene;

(g) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;

(h) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;

(i) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;

(j) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;

(k) Subpart V — Equipment Leaks (Fugitive Emission Sources);

(l) Subpart Y — Benzene Emissions from Benzene Storage Vessels;

(m) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and

(n) Subpart FF — Benzene Waste Operations.

(5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart F — SOCMI;

(c) Subpart G — SOCMI — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(d) Subpart H — SOCMI — Equipment Leaks;

(e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;

(f) Subpart J — Polyvinyl Chloride and Copolymers Production;

(g) Subpart L — Coke Oven Batteries;

(h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (as codified in the July 1, 2006 CFR);

(i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;

(k) Subpart Q — Industrial Process Cooling Towers;

(l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);

(m) Subpart S — Pulp and Paper Industry;

(n) Subpart T — Halogenated Solvent Cleaning;

(o) Subpart U — Group I Polymers and Resins;

(p) Subpart W — Epoxy Resins and Non-Nylon Polyamides Production;

(q) Subpart X — Secondary Lead Smelting;

(r) Subpart Y — Marine Tank Vessel Loading Operations;

(s) Subpart AA — Phosphoric Acid Manufacturing Plants;

(t) Subpart BB — Phosphate Fertilizer Production Plants;

(u) Subpart CC — Petroleum Refineries;

(v) Subpart DD — Off-Site Waste and Recovery Operations;

(w) Subpart EE — Magnetic Tape Manufacturing Operations;

(x) Subpart GG — Aerospace Manufacturing and Rework Facilities;

(y) Subpart HH — Oil and Natural Gas Production Facilities;

(z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);

(aa) Subpart JJ — Wood Furniture Manufacturing Operations;

(bb) Subpart KK — Printing and Publishing Industry;

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(cc) Subpart LL — Primary Aluminum Reduction Plants;  
 (dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;  
 (ee) Subpart OO — Tanks — Level 1;  
 (ff) Subpart PP — Containers;  
 (gg) Subpart QQ — Surface Impoundments;  
 (hh) Subpart RR — Individual Drain Systems;  
 (ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;  
 (jj) Subpart TT — Equipment Leaks — Control Level 1;  
 (kk) Subpart UU — Equipment Leaks — Control Level 2;  
 (ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;  
 (mm) Subpart WW — Storage Vessels (Tanks) — Control Level 2;  
 (nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;  
 (oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;  
 (pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;  
 (qq) Subpart DDD — Mineral Wool Production;  
 (rr) Subpart EEE — Hazardous Waste Combustors;  
 (ss) Subpart GGG — Pharmaceuticals Production;  
 (tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;  
 (uu) Subpart III — Flexible Polyurethane Foam Production;  
 (vv) Subpart JJJ — Group IV Polymers and Resins;  
 (ww) Subpart LLL — Portland Cement Manufacturing Industry;  
 (xx) Subpart MMM — Pesticide Active Ingredient Production;  
 (yy) Subpart NNN — Wool Fiberglass Manufacturing;  
 (zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;  
 (aaa) Subpart PPP — Polyether Polyols Production;  
 (bbb) Subpart QQQ — Primary Copper Smelting;  
 (ccc) Subpart RRR — Secondary Aluminum Production;  
 (ddd) Subpart TTT — Primary Lead Smelting;  
 (eee) Subpart UUU — Petroleum Refineries — Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;  
 (fff) Subpart VVV — Publicly Owned Treatment Works;  
 (ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;  
 (hhh) Subpart AAAA — Municipal Solid Waste Landfills;  
 (iii) Subpart CCCC — Manufacturing of Nutritional Yeast;  
 (jjj) Subpart DDDD — Plywood and Composite Wood Products;  
 (kkk) Subpart EEEE — Organic Liquids Distribution (non-gasoline);  
 (lll) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;  
 (mmm) Subpart GGGG — Solvent Extraction for Vegetable Oil Production;  
 (nnn) Subpart HHHH — Wet Formed Fiberglass Mat Production;  
 (ooo) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;  
 (ppp) Subpart JJJJ — Paper and Other Web Coating;  
 (qqq) Subpart KKKK — Surface Coating of Metal Cans;  
 (rrr) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;  
 (sss) Subpart NNNN — Surface Coating of Large Appliances;  
 (ttt) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;  
 (uuu) Subpart PPPP — Surface Coating of Plastic Parts and Products;  
 (vvv) Subpart QQQQ — Surface Coating of Wood Building Products;  
 (www) Subpart RRRR — Surface Coating of Metal Furniture;  
 (xxx) Subpart SSSS — Surface Coating of Metal Coil;  
 (yyy) Subpart TTTT — Leather Finishing Operations;  
 (zzz) Subpart UUUU — Cellulose Production Manufacturing;  
 (aaaa) Subpart VVVV — Boat Manufacturing;  
 (bbbb) Subpart WWWW — Reinforced Plastics Composites Production;  
 (cccc) Subpart XXXX — Rubber Tire Manufacturing;  
 (dddd) Subpart YYYY — Stationary Combustion Turbines;  
 (eeee) Subpart ZZZZ — Reciprocating Internal Combustion Engines;  
 (ffff) Subpart AAAAA — Lime Manufacturing;  
 (gggg) Subpart BBBB — Semiconductor Manufacturing;  
 (hhhh) Subpart CCCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;  
 (jjjj) Subpart EEEEE — Iron and Steel Foundries;

(kkkk) Subpart FFFFF — Integrated Iron and Steel Manufacturing Facilities;  
 (llll) Subpart GGGGG — Site Remediation;  
 (mmmm) Subpart HHHHH — Misc. Coating Manufacturing;  
 (nnnn) Subpart IIIII — Mercury Cell Chlor-Alkali Plants;  
 (oooo) Subpart JJJJJ — Brick and Structural Clay Products Manufacturing;  
 (pppp) Subpart KKKKK — Clay Ceramics Manufacturing;  
 (qqqq) Subpart LLLLL — Asphalt Processing & Asphalt Roofing Manufacturing;  
 (rrrr) Subpart MMMMM — Flexible Polyurethane Foam Fabrication Operations;  
 (ssss) Subpart NNNNN — Hydrochloric Acid Production;  
 (tttt) Subpart PPPPP — Engine Tests Cells/Standards;  
 (uuuu) Subpart QQQQQ — Friction Materials Manufacturing Facilities;  
 (vvvv) Subpart RRRRR — Taconite Iron Ore Processing;  
 (wwww) Subpart SSSSS — Refractory Products Manufacturing;  
 (xxxx) Subpart TTTTT — Primary Magnesium Refining;  
 (yyyy) Subpart WWWW — Area Sources: Hospital Ethylene Oxide Sterilization;  
 (zzzz) Subpart YYYYY — Area Sources: Electric Arc Furnace Steelmaking Facilities;  
 (aaaaa) Subpart ZZZZZ — Area Sources: Iron and Steel Foundries;  
 (bbbbb) Subpart BBBBB — Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;  
 (ccccc) Subpart DDDDD — Area Sources: Polyvinyl Chloride and Copolymers Production;  
 (ddddd) Subpart EEEEE — Area Sources: Primary Copper Smelting;  
 (eeeee) Subpart FFFFF — Area Sources: Secondary Copper Smelting;  
 (fffff) Subpart GGGGG — Area Sources: Primary Nonferrous Metals — Zinc, Cadmium, and Beryllium;  
 (ggggg) Subpart LLLLL — Area Sources: Acrylic and Modacrylic Fibers Production;  
 (hhhhh) Subpart MMMMM — Area Sources: Carbon Black Production;  
 (iiiiii) Subpart NNNNN — Area Sources: Chemical Manufacturing: Chromium Compounds;  
 (jjjjj) Subpart OOOOO — Area Sources: Flexible Polyurethane Foam Production;  
 (kkkkk) Subpart PPPPP — Area Sources: Lead Acid Battery Manufacturing;  
 (lllll) Subpart QQQQQ — Area Sources: Wood Preserving;  
 (mmmmm) Subpart RRRRR — Area Sources: Clay Ceramics Manufacturing;  
 (nnnnn) Subpart SSSSS — Area Sources: Glass Manufacturing;  
 (ooooo) Subpart TTTTT — Area Sources: Secondary Nonferrous Metals Processing.  
 Stat. Auth.: ORS 468.020  
 Stats. Implemented: ORS 468A.025  
 Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0232

### Purpose

This rule establishes emission limitations and management practices for hazardous air pollutants (HAP) and volatile organic compounds (VOC) emitted from the loading of gasoline storage tanks and dispensing of fuel at gasoline dispensing facilities (GDF). This rule also establishes requirements to demonstrate compliance with the emission limitations and management practices.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08

## 340-244-0234

### Affected Sources

(1) The affected source to which the emission standards apply is each GDF. The affected source includes each gasoline cargo tank during the delivery of product to a GDF and also includes each storage tank. (2) The emissions standards in OAR 340-244-0236 through 0252 do not apply to

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agricultural operations as defined in ORS 468A.020. Agricultural operations are however required to comply with the Gasoline Dispensing NESHAP, if applicable (40 CFR part 63 subpart CCCCC).

(3) All GDFs must comply with the requirements of OAR 340-244-0240.

(4) The owner or operator of a GDF must comply with the requirements of OAR 340-244-0242 for the following gasoline storage tanks:

(a) All tanks with a capacity of 250 gallons or more located at GDFs:

(A) Whose annual throughput exceeds 480,000 gallons of gasoline or more;

(B) Whose average monthly throughput exceeds 100,000 gallons of gasoline or more; or

(C) In Clackamas, Multnomah, or Washington County whose annual throughput exceeds 120,000 gallons of gasoline or more.

(b) All tanks with a capacity of 1,500 gallons or more located at GDFs in the Portland AQMA, Medford AQMA, or Salem SATS.

(5) The owner or operator of a GDF must comply with the requirements of OAR 340-244-0242(4) for any gasoline storage tank equipped with a vapor balance system.

(6) An affected source must, upon request by the Department, demonstrate their annual or average monthly throughput.

(7) The owner or operator of an affected source, as defined in section (1) of this rule, is not required to obtain a Title V Operating Permit. However, the owner or operator must still apply for and obtain a Title V Operating Permit if meeting one or more of the applicability criteria found in OAR 340-218-0020.

(8) The loading of aviation gasoline storage tanks at airports is not subject to this rule and the aviation gasoline is not included in the gasoline throughput specified in sections (2) through (5) of this rule.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0236

### Affected Equipment or Processes

(1) The emission sources to which this rule applies are gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDF that meet the criteria specified in OAR 340-244-0234. Pressure/Vacuum vents on gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDF are covered emission sources. The equipment used for the refueling of motor vehicles is not covered by this rule.

(2) An affected source is a new affected source if construction commenced on the affected source after November 9, 2006, and the applicability criteria in OAR 340-244-0234 are met at the time operation commenced.

(3) An affected source is reconstructed if meeting the criteria for reconstruction as defined in 40 CFR 63.2.

(4) An affected source is an existing affected source if it is not new or reconstructed.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0238

### Compliance Dates

(1) For a new or reconstructed affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, no later than January 10, 2008 or upon startup, whichever is later, except as follows:

(a) The owner or operator of a new or reconstructed GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(b) For tanks located at a GDF with average monthly throughput less than 100,000 gallons of gasoline and not listed in OAR 340-244-0234(4)(a)(C) or (4)(b) must comply with OAR 340-244-0242, as applicable, no later than December 13, 2009 or upon startup, whichever is later.

(c) The owner or operator of a GDF subject to Table 4 of this division must comply no later than September 23, 2008 or upon startup, whichever is later.

(2) For an existing affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, by no later than January 10, 2011, except as follows:

(a) For tanks with a capacity between 1,500 and 40,000 gallons and located in the Portland AQMA, Medford AQMA, or Salem SATS, the owner or operator must comply with the standards in OAR 340-244-0240(2) and 0242 no later than December 13, 2008.

(b) For tanks located at an affected source located in Clackamas, Multnomah, or Washington County, whose annual throughput exceeds 120,000 gallons, the owner or operator must comply with the standards in OAR 340-244-0240(2) and 0242 no later than December 13, 2008.

(c) The owner or operator of an existing GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(3) For an existing affected source that becomes subject to the control requirements in this rule because of an increase in the average monthly throughput, as specified in OAR 340-244-0234(4), the owner or operator must comply with the standards in this rule no later than January 10, 2011 or within 2 years after the affected source becomes subject to the control requirements in this rule, whichever is later.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0240

### Work Practice and Submerged Fill Requirements

(1) The owner or operator of a GDF must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(a) Minimize gasoline spills;

(b) Do not top off or overfill vehicle tanks;

(c) Post a sign at the GDF instructing attendants not to top off vehicle tanks;

(d) Clean up spills as expeditiously as practicable;

(e) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;

(f) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(g) Ensure that cargo tanks unloading at the GDF comply with subsections (1)(a) through (e) of this rule.

(2) Any cargo tank unloading at a GDF equipped with a functional vapor balance system must connect to the vapor balance system whenever gasoline is being loaded.

(3) The owner or operator must only load gasoline into storage tanks at the facility by utilizing submerged filling, as defined in OAR 340-244-0030, and as specified in subsection (2)(a) or (2)(b) of this rule.

(a) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank.

(b) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.

(4) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the submerged fill requirements in section (2) of this rule.

(5) The owner or operator must submit the applicable notifications as required under OAR 340-244-0246.

(6) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.

(7) The owner or operator must comply with the requirements of this rule by the applicable dates specified in OAR 340-244-0238.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0242

### Vapor Balance Requirements

(1) Except as provided in section (2) of this rule, the owner or operator of gasoline storage tank listed in OAR 340-244-0234(4), must meet the requirements in either subsection (1)(a) or (1)(b) of this rule.

(a) Each management practice in Table 4 of this division that applies to the GDF.

(b) If, prior to January 10, 2008, the owner or operator operates a vapor balance system at the GDF that meets the requirements of either paragraph (2)(b)(A) or (2)(b)(B) of this rule, the owner or operator will be deemed in compliance with this section.

(A) Achieves emissions reduction of at least 90 percent.



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(B) Operates using management practices at least as stringent as those in Table 4 of this division.

(2) Gasoline storage tanks equipped with floating roofs or the equivalent are not required to comply with the control requirements in section (1) of this rule.

(3) Cargo tanks unloading at a GDF must comply with the requirements of OAR 340-244-0240(1) and management practices in Table 5 of this division.

(4) The owner or operator of a GDF subject to section (1) of this rule or having a gasoline storage tank equipped with a vapor balance system, must comply with the following requirements on and after the applicable compliance date in OAR 340-244-0238:

(a) When loading a gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded.

(b) Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order.

(c) In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, have the vapor balance equipment inspected on an annual basis to discover potential or actual equipment failures.

(d) Replace, repair or modify any worn or ineffective component or design element within 24 hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within 2 working days of detecting such a leak. Such repair parts must be installed within 5 working days after receipt.

(5) The owner or operator of a GDF subject to section (1) of this rule must also comply with the following requirements:

(a) The applicable testing requirements contained in OAR 340-244-0244.

(b) The applicable notification requirements under OAR 340-244-0246.

(c) The applicable recordkeeping and reporting requirements as specified in OAR 340-244-0248 and 0250.

(d) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-244-0244

#### Testing and Monitoring Requirements

(1) If required to install a vapor balance system under OAR 340-244-0242, the owner or operator must comply with the requirements in subsections (1)(a) and (b) of this rule at the time of installation of a vapor balance system or a new gasoline storage tank. Each owner or operator of a GDF with monthly throughput of 100,000 gallons of gasoline or more must comply with the requirements in subsections (1)(a) and (b) of this rule every 3 years following the time of installation of a vapor balance system or a new gasoline storage tank.

(a) The owner or operator must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 4 of this division, for pressure-vacuum vent valves installed on gasoline storage tanks using the test methods identified in paragraph (1)(a)(A) or (B) of this rule.

(A) California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,—Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (incorporated by reference, see 40 CFR 63.14).

(B) Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f).

(b) The owner or operator must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 4 of this division, for the vapor balance system by conducting a static pressure test on the gasoline storage tanks using the test methods identified in paragraph (1)(b)(A) or (B) of this rule.

(A) California Air Resources Board Vapor Recovery Test Procedure TP-201.3,—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by reference, see 40 CFR 63.14).

(B) Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f).

(2) Each owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 4 of this division, must demonstrate to the Department the equivalency of their vapor balance system to that described in Table 4 of this division using the procedures specified in subsections (2)(a) through (c) of this rule.

(a) The owner or operator must demonstrate initial compliance by conducting an initial performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,—Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by reference, see 40 CFR 63.14).

(b) The owner or operator must, during the initial performance test required under subsection (2)(a) of this rule, determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 4 of this division and for the static pressure performance requirement in item 1(h) of Table 4 of this division.

(c) The owner or operator must comply with the testing requirements specified in section (1) of this rule.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

### 340-244-0246

#### Notifications

(1) Each owner or operator subject to the control requirements in OAR 340-244-0240(2) must comply with subsections (1)(a) through (c) of this rule.

(a) The owner or operator must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0240(2), unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Initial Notification must contain the information specified in paragraphs (1)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and the Department as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0240(1) through (3) that apply to the owner or operator.

(b) The owner or operator must submit a Notification of Compliance Status to EPA's Region 10 Office and the Department, as specified in 40 CFR 63.13, by the compliance date specified in OAR 340-244-0238 unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252. If the facility is in compliance with the requirements of OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (1)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (1)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator is operating in compliance with an enforceable State rule or permit that requires submerged fill as specified in OAR 340-244-0240(2), the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status under subsection (1)(a) or (b) of this rule.

(2) Each owner or operator subject to the control requirements in OAR 340-244-0242 must comply with subsections (2)(a) through (e) of this rule.

(a) The owner or operator must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0242. The Initial Notification must contain the information specified in paragraphs (2)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and the Department as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0242 that apply to the owner or operator.

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(b) The owner or operator must submit a Notification of Compliance Status to EPA's Regional 10 Office and the Department, as specified in 40 CFR 63.13, by the compliance date specified in OAR 340-244-0238. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252. If the facility is in compliance with the requirements OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (2)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (2)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator satisfies the requirements in both paragraphs (2)(c)(A) and (B) of this rule, the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status if the owner or operator operates a vapor balance system at the gasoline dispensing facility that meets the requirements of either paragraphs (2)(c)(A) or (B) of this rule.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 4 of this division.

(d) The owner or operator must submit a Notification of Performance Test, as specified in 40 CFR 63.9(e), prior to initiating testing required by OAR 340-244-0244(1) and (2).

(e) The owner or operator must submit additional notifications specified in 40 CFR 63.9, as applicable.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0248

### Recordkeeping Requirements

(1) Each owner or operator must keep the following records:

(a) Records of all tests performed under OAR 340-244-0244(1) and (2);

(b) Records related to the operation and maintenance of vapor balance equipment required under OAR 340-244-0242. Any vapor balance component defect must be logged and tracked by station personnel using forms provided by the Department or a reasonable facsimile.

(c) Records of total throughput volume of gasoline, in gallons, for each calendar month.

(d) Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions.

(2) Records required under section (1) of this rule must be kept for a period of 5 years and must be made available for inspection by the Department during the course of a site visit.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0250

### Reporting Requirements

Each owner or operator subject to the management practices in OAR 340-244-0242 must report to the Department the results of all volumetric efficiency tests required under OAR 340-244-0244(1) and (2). Reports submitted under this rule must be submitted within 30 days of the completion of the performance testing.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## 340-244-0252

### General Provision Applicability

Table 3 to 40 CFR part 63 subpart CCCCCC shows which parts of the General Provisions apply to the owner or operator.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef 12-31-08

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Set 2009 Sturgeon and Smelt Seasons for the Columbia and lower Willamette rivers.

**Adm. Order No.:** DFW 148-2008(Temp)

**Filed with Sec. of State:** 12-19-2008

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**Notice Publication Date:**

**Rules Amended:** 635-017-0095, 635-023-0095, 635-042-0130, 635-042-0135

**Subject:** Amended rules set commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam and establish recreational sturgeon fishing seasons in the Columbia River and the Willamette River downstream of Willamette Falls (including Multnomah Channel). Revisions are consistent with the action taken December 18, 2008 by the Columbia River Compact agencies of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-017-0095

### Sturgeon Season

(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) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited August 1 through September 30.

(4) Only white sturgeon with a 38-inch minimum and 54-inch maximum fork length may be retained. Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09

## 635-023-0095

### Sturgeon Season

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon with a 38-inch minimum and 54-inch maximum fork length restriction, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 9 through June 28; and

(c) July 2 through July 5 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 8, June 29 through July 1, and from July 6 through December 31.

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(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 38-54 inches in fork length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 41-54 inches in fork length may be retained.

(8) During the fishing period as identified in subsection (4)(c) of this rule, only white sturgeon between 41-54 inches in fork length may be retained.

(9) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(10) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09

## 635-042-0130

### Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River in Zones 1 through 5 during the following times:

(a) 24 hours per day from 12:01 a.m. December 1 through 11:59 p.m. December 31; and

(b) Mondays and Thursdays from 7:00 a.m. to 2:00 p.m. (7 hrs.) during the period from January 1 through March 31.

(2) It is *unlawful* to use any gear other than those listed below for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is *unlawful* to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW

130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09

## 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.

(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, cannery, 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 cannery;

(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.

(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-



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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

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

**Adm. Order No.:** DFW 149-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 12-17-08

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 635-005-0068, 635-005-0069

**Rules Amended:** 635-005-0005, 635-005-0064, 635-005-0065, 635-005-0067, 635-006-0850, 635-006-0910, 635-006-1035, 635-006-1085

**Subject:** Rules were adopted and amended relating to the issuance and management of Developmental Fisheries Permits. Modifications and adoptions were made as determined necessary to the developmental fishery species list and requirements for hagfish, spot prawn, anchovy and developmental crab commercial fisheries.

Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-005-0005

### Abalone Fishery Prohibited

It is unlawful to take abalone for commercial purposes except that a commercial aquaculture facility may take abalone for use as broodstock under the terms and conditions specified in a permit issued by the Department. Application for such a permit shall be in writing and shall include a description of the commercial aquaculture facility, the methods for collecting and returning broodstock abalone to and from the wild, the methods for checking abalone and imported kelp food for pathogens or exotic fauna, the procedures for isolating and culturing abalone to prevent contamination of wild abalone stock and such other information as the Department may require. Permit applications shall be mailed to: Marine Resources Program Office, Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR, 97365.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0320, 1975; Renumbered from 635-036-0190, 1979; FWC 24-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 149-2008, f. & cert. ef. 12-17-08

## 635-005-0064

### Closed Season

(1) It is *unlawful* to take Tanner, Oregon hair, and scarlet king crab from the Pacific Ocean from November 1 until the opening of the next ocean Dungeness crab season in that area.

(2) It is *unlawful* to retain red rock and box crab when the Dungeness crab fishery is closed (635-005-0045).

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 506.450 - 506.465

Hist.: FWC 12-1982, f. & ef. 2-16-82; FWC 17-1982, f. & ef. 3-22-82; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 149-2008, f. & cert. ef. 12-17-08

## 635-005-0065

### Fishing Gear

(1) Except as provided in OAR 635-005-0063, it is unlawful to take, Tanner, Oregon hair, and scarlet king crab for commercial purposes except by crab rings, crab pots, and crab pot longline gear. Crab rings are defined as any fishing device that allows crab unrestricted entry or exit while fishing. Crab pots and crab pot longline gear must comply with the provisions contained in 635-004-0035.

(2) Except as provided in OAR 635-005-0063, it is unlawful to take red rock and box crab for commercial purposes except by crab rings and crab pots. Crab rings and crab pots must comply with the provisions contained in 635-005-0055.

(3) When fishing for Tanner, Oregon hair and scarlet king crab all buoys must be inscribed with an annual identification buoy number issued by the Department. No other brand number is allowed on the buoy.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.129

Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 149-2008, f. & cert. ef. 12-17-08

## 635-005-0067

### Size and Sex

There are no size or sex restrictions for the taking of red rock, box, Tanner, Oregon Hair and scarlet king crab; however, these crab may not be mutilated before landing so that species cannot be determined.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.129

Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 149-2008, f. & cert. ef. 12-17-08

## 635-005-0068

### Incidental Catch Limits

All groundfish, as defined by OAR 635-004-0020, Dungeness crab and salmon taken in the commercial crab fishery must be returned to the water immediately.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.129

Hist.: DFW 149-2008, f. & cert. ef. 12-17-08

## 635-005-0069

### Tanner Crab Notification of Activity

(1) A permittee must provide, to Department offices and processing plants on the list provided by the Marine Resources Program office in Newport, a Notice of Intent to set gear at least one week in advance of any gear being set. A Notice of Intent to set gear must include: the vessel name; general area of expected fishing activity; and dates of expected fishing activity.

(2) Once fishing gear has been placed in the water, the permittee must provide to Department offices and processing plants on the list provided by the Marine Resources Program office in Newport, a Notice of Location of set gear within 24 hours. A Notice of Location of set gear must include: the vessel name; exact location of gear (depth and latitude/longitude or loran); and dates of intended fishing activity. If individual strings of gear are more than one mile from each other, the ends of each string must be identified. If individual strings of gear are less than one mile from each other, the block of gear may be identified. If gear is moved more than 5 miles, a new Notice of Location of set gear must be distributed.

(3) If more than 5 pots are lost in any one location, a Notice of Lost Gear must be sent to the Department's Marine Resources Program office in Newport within 24 hours. A Notice of Lost Gear must include: the vessel name; a best estimate of location of lost gear (depth and latitude/longitude or loran); and the amount of gear lost.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.129

Hist.: DFW 149-2008, f. & cert. ef. 12-17-08

## 635-006-0850

### Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH.

(A) Pacific hagfish (*Eptatretus stouti*) fishery has an annual landing renewal requirement of a total of 25,000 pounds. New hagfish permits are valid for 120 days from date of issue, unless landings of at least 5,000 pounds are made within 120 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Swordfish (*Xiphias gladius*) fishery has an annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gillnet may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gillnet gear must conform to California gear restrictions;

(C) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has an annual renewal landing requirement of a total of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gillnet may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(b) INVERTEBRATES.

(A) Box crab (*Lopholithodes foraminatus*) fishery has an annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only. A valid Oregon Dungeness crab permit is required to receive a developmental fisheries box crab permit;

# ADMINISTRATIVE RULES

(B) Spot prawn (*Pandalus platyceros*) fishery has an annual renewal landing requirement of a total of at least 500 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(2) The Developmental Fisheries Species List, Category "B," is as follows:

- (a) FISH.
  - (A) Salmon shark (*Lamna ditropis*);
  - (B) Carp (*Cyprinus carpio*);
  - (C) Black hagfish (*Eptatretus deani*);
  - (D) Yellow perch (*Perca flavescens*);
  - (E) Eelpouts (family *Zoarctidae*);
  - (F) Brown bullhead (*Ameiurus nebulosus*);
  - (G) Skiffish (*Erilepis zonifer*);
  - (H) Northern squawfish (*Ptychocheilus oregonensis*);
  - (I) Pacific saury (*Cololabis saira*);
  - (J) Pacific sandfish (*Trichodon trichodon*);
  - (K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);
  - (L) Pacific pomfret (*Brama japonica*);
  - (M) Slender sole (*Eopsetta exilis*).
- (b) INVERTEBRATES.
  - (A) Pacific sand crab (*Emerita analoga*);
  - (B) Freshwater mussels (families *Margaritifera*, *Anodonta*, *Gonidea*, and *Corbicula*);
  - (C) Ocean cockle clams (*Clinocardium nuttallii*);
  - (D) California market squid (*Loligo opalescens*) and other squid (several species);
  - (E) Fragile urchin (*Alloccentrotus fragilis*);
  - (F) Sea cucumber (*Parastichopus* spp.);
  - (G) Giant octopus (*Octopus dofleini*);
  - (H) Marine snails (all species);
  - (I) Coonstripe shrimp (*Pandalus danae*);
  - (J) Sidestripe shrimp (*Pandalopsis dispar*);
  - (K) Grooved tanner crab (*Chionoecetes tanneri*);
  - (L) Oregon hair crab (*Paralomis multispina*);
  - (M) Scarlet king crab (*Lithodes couesi*).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

- (a) FISH.
  - (A) Spiny dogfish (*Squalus acanthias*);
  - (B) Soupfin shark (*Galeorhinus zyopterus*);
  - (C) Skate (family *Rajidae*);
  - (D) American shad (*Alosa sapidissima*);
  - (E) Pacific cod (*Gadus macrocephalus*);
  - (F) Pacific flatnose (*Antimora microlepis*);
  - (G) Pacific grenadier (*Coryphaenoides acrolepis*);
  - (H) Jack mackerel (*Trachurus symmetricus*);
  - (I) Chub (Pacific) mackerel (*Scomber japonicus*);
  - (J) Greenstriped rockfish (*Sebastes elongatus*);
  - (K) Redstripe rockfish (*Sebastes proriger*);
  - (L) Shortbelly rockfish (*Sebastes jordani*);
  - (M) Sharpchin rockfish (*Sebastes zacentrus*);
  - (N) Splitnose rockfish (*Sebastes diploproa*);
  - (O) Pacific sanddab (*Citharichthys sordidus*);
  - (P) Butter sole (*Pleuronectes solepis*);
  - (Q) English sole (*Pleuronectes vetulus*);
  - (R) Rex sole (*Errex zechirus*);
  - (S) Rock sole (*Pleuronectes bilineatus*);
  - (T) Sand sole (*Psettichthys melanostictus*);
  - (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
  - (V) Spotted ratfish (*Hydrolagus coliei*);
  - (W) Wolf-eel (*Anarrhichthys ocellatus*);
  - (X) Walleye pollock (*Theragra chalcogramma*);
  - (Y) Blue shark (*Prionace glauca*);
- (b) INVERTEBRATES.
  - (A) Red rock crab (*Cancer productus*);
  - (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
  - (C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99, DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 67-2005(Temp), f. 7-5-05, cert. ef. 7-6-05 thru 12-31-05; DFW 122-2005(Temp), f. & cert. ef. 10-18-05 thru 11-30-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 132-2007(Temp), f. 12-20-07, cert. ef. 1-1-08 thru 1-31-08; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 149-2008, f. & cert. ef. 12-17-08

## 635-006-0910

### Procedures for Issuance, Transfer and Renewal of Developmental Fisheries Species Permits

(1) Applications:

(a) An applicant for a permit must submit a complete application in writing accompanied by an annual fee of \$75. The application shall include the species of fish to be taken, the method and gear proposed to be used, and the area from which the Developmental Fisheries Species are to be taken, the vessel operator, and other information as the Oregon Department of Fish and Wildlife (Department) may require;

(b) Except as listed below, complete applications must be received postmarked or date-stamped by January 1 of the year of issue for new species added to the developmental fishery list in OAR 635-006-0850, and thereafter by the annual filing date of February 1 of the year of issue.

(A) Applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue; and

(B) Applications for new hagfish permits will be accepted on a first-come, first-serve basis.

(c) An application shall be considered complete if it is legible, has all information requested on the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned and, unless it is thereafter resubmitted and deemed complete by the filing date, the individual shall not be considered to have applied in a timely manner;

(d) Before applying for a permit, an applicant must first have obtained the appropriate vessel license (or individual license if permit is issued to individual) for the year the permit will be issued.

(e) The vessel operator designated in subsection (1)(a) above may change up to twice a year, with at least three work days' notice by the permit holder to ODFW, Newport office.

(2) Number of permits allowed:

(a) An individual shall not submit more than one application, per vessel (or per person for individual permits), for each developmental fishery species gear category;

(b) A permit holder who holds a valid developmental fisheries permit may not apply for any additional permits for the same vessel (or person for an individual permit) and species gear category unless the Department proposes to deny that permit;

(c) If a permit holder who holds a permit at issue either before the Commercial Fishery Permit Board or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the Commercial Fishery Permit Board or in court, the permit holder shall immediately surrender one of the permits to any Department office, so that only one valid permit per species gear category is held.

(3) Issuance of permits:

(a) Except for new hagfish permits, if the number of applications received by the filing date is less than the number of permits available, all applicants who have submitted complete applications shall be issued a permit within 14 days of the filing date.

(A) Any remaining permits shall be issued on a first-come, first-served basis, within 14 days of receipt of each completed application, until the maximum number of permits is issued. Priority shall be based on postmark or date-stamped date;

(B) The names of applicants who did not receive a permit shall be placed on an alternates list, in the order they are received, until the next annual filing date. Applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Permits which become available before the end of the year shall be made available to the alternates list, in the order listed. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If

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an alternate fails to apply, he shall forfeit the permit and the permit shall then be made available to the next name on the alternates list.

(b) Except for new hagfish permits, if the number of applications received by the filing date is greater than the number of permits available, the Department shall determine first how many applications there are with preference points as accrued under OAR 635-006-0915, except for new species that have qualification restrictions set forth in 635-006-0850. Evidence of landings must be supplied by the applicant and submitted with the application.

(A) If the number of these applicants does not exceed the number of permits, they shall be given all available permits and any remaining applicants shall be placed in a lottery;

(B) If the number of applicants who have preference points exceeds the number of permits, then these applicants only shall be placed in a lottery, and grouped by the number of preference points they have accrued for each species gear category. Applicants with the highest number of preference points for each species gear category will be drawn first. Applicants having the highest number of preference points per species gear category will be drawn next. This permit issuance process will continue through descending numbers of preference points until all the available permits have been issued, unless all qualified applicants with preference points have been issued permits prior to that point. Permits shall be issued within 14 days of the lottery;

(C) In addition, remaining applicants (who do not have preference points) shall be placed in a lottery and their names shall be drawn;

(D) The Department then shall prepare an alternates list, in which applicants who have preference points are listed first (in the order drawn), and thereafter remaining applicants are listed, in the order in which they were drawn. All applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Any permits available before the end of the year shall be made available to the first name on the alternates list. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply for the lottery permit within 30 days, he shall forfeit such permit and the permit shall then be made available to the next name on the alternates list.

(c) Permits may be made available before the end of the year by a permit holder voluntarily turning in a permit.

(d) A subcommittee of the Developmental Fishery Board shall evaluate the business plans submitted by hagfish fishery applicants to determine if the applicant is likely to actively prosecute the fishery. If more applicants submit acceptable business plans than there are available new permits, then the available permits will be distributed as otherwise specified in subsections (3)(a) and (3)(b) of this rule.

(4) Persons to whom permits are issued: Permits shall be issued to an individual person or entity and assigned to a vessel, except when hand harvest methods are used. The permit holder is the owner or controller of the vessel or the individual person when hand harvest methods are used.

(5) Transfer of permits: Permits for Developmental Fisheries Species are not transferable to another person or entity; provided however that permits may be reassigned to another vessel owned or leased and controlled by the permit holder up to two times annually.

(a) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member as defined by OAR 635-006-0810. Permit transfer shall require a copy of the death certificate and the original permit, and must be requested by the family member to the deceased which shall be presumed by possession of the permit and death certificate.

(b) To reassign the vessel on a permit, a permit holder shall first apply on a form provided by the Department and shall include a \$25 fee;

(c) If the permit holder is not the registered owner of the vessel to which a permit is being reassigned, a copy of a signed lease agreement with the owner of the vessel must accompany the application. The lease agreement must show the permit holder will be in control of the daily activities of the vessel during the time of the lease.

(d) No reassignment shall be effective until the permit holder has received approval from the Department and an updated permit.

(e) If a permit is reassigned to a vessel under the ownership of other than the permit holder, the permit holder or designated vessel operator must be aboard the vessel during harvest activities under the permit.

(6) Renewal of permits:

(a) Permits may be renewed by submission, to the Department, of the appropriate fee and a complete application date-stamped or postmarked

before January 1 of the year for which renewal is sought, except renewal applications for box crab permits must be postmarked or date-stamped before December 1 of the year prior to which renewal is sought;

(b) An application for renewal shall be considered complete if it is legible and has all information requested on the form and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete before the deadline listed in section (6)(a) above, the individual shall not be considered to have applied for renewal in a timely manner;

(c) It is the responsibility of the permit holder to ensure an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner;

(d) In addition to timely and complete filing to renew a permit, a permit holder must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permit holder obtained a permit later than July 1 of the prior year, the permit holder shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permit holder shall be required to demonstrate the annual landing requirement was fulfilled during the first full year in which the permit was held.

(e) Landings made by one vessel can not be used for qualification to renew more than one permit per permit category in any given year.

(f) In addition to the above landing requirements, logbooks required under OAR 635-006-0890 must be turned into an ODFW office by the application deadline for renewal of a permit.

(7) Authority of Director: Consistent with OAR 635-006-0810 through 635-006-0950, the Director is authorized to issue Developmental Fisheries Permits under the authority of ORS 506.460.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 2-1996, f. & cert. ef. 1-23-96; FWC 1-1997, f. & cert. ef. 1-16-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 102-2001, f. & cert. ef. 10-23-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 48-2002(Temp), f. & cert. ef. 5-13-02 thru 11-8-02; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 6-2004(Temp), f. 1-28-04, cert. ef. 1-31-04 thru 3-31-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 149-2008, f. & cert. ef. 12-17-08

### 635-006-1035

#### Eligibility Requirements for a Permit

Eligibility for a limited entry permit is as follows:

(1) Gillnet salmon — see ORS 508.784.

(2) Troll salmon — see ORS 508.810.

(3) Shrimp — see ORS 508.886 and 508.895.

(4) Scallop — see ORS 508.852.

(5) Roe-herring — The ODFW shall issue a permit as per ORS 508.765:

(a) By renewal of previous year's permit;

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085.

(6) Sea Urchin — An individual licensed as a commercial fisher under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085; or

(c) Through a duly authorized medical transfer of an existing permit in accordance with OAR 635-006-1095;

(d) By combining three currently renewed permits into one new permit as provided in OAR 635-006-1095.

(7) Ocean Dungeness crab:

(a) See ORS 508.931;

(b) For the purposes of eligibility for the Ocean Dungeness Crab Fishery Permit, a boat which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year;

(c) ORS 508.931 and 508.941 require that the vessel be previously licensed in accordance with 508.260 for the purposes of initial eligibility for an ocean Dungeness Crab Fishery Permit. A Single Delivery License may not be substituted for a boat license for this purpose.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(9) Brine Shrimp — A commercial fisher licensed under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:



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(a) By renewal of previous year's permit; or  
(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085.

(10) Bay clam dive fishery — An individual licensed as a commercial harvester under ORS 508.235 or a vessel is eligible to obtain the permit required by OAR 635-006-1015:

(a) For a South Coast Bay Clam Dive Permit for the year 2006, if a South Coast Bay Clam Dive Permit was issued to the individual or vessel under the Developmental Fisheries Program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005; or

(b) For a Coast Wide Bay Clam Dive Permit for the year 2006, if a Coast Wide Bay Clam Dive Permit was issued to the individual or vessel under the Developmental Fisheries Program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005.

(c) After 2006, by renewal of the previous years' permit and satisfaction of the requirements in OAR 635-006-1075(1)(j).

(11) Sardine fishery:

(a) An individual or entity is eligible to obtain the vessel permit required by OAR 635-006-1015:

(A) If issued a Sardine Permit under the Developmental Fisheries Program (OAR 635-006-0900) in 2005; and

(B) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(C) Lawfully landed:

(i) At least 1,500 metric tons or 35 deliveries in any one year from 2000 through 2004; or

(ii) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

(b) If the number of permits issued under section (11)(a) of this rule is less than 20, enough permits to reach a total of 20 may be issued under section (11)(c) of this rule to vessels in order of highest total number of deliveries during 2000–2004.

(c) An individual or entity is eligible to obtain the vessel permit under section (11)(b) of this rule if the vessel for which applications is made:

(A) Was not issued a permit under section (11)(a) of this rule; and

(B) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(C) Lawfully landed:

(i) At least 1,500 metric tons or 35 deliveries in any one year from 2000 through 2004; or

(ii) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

(d) In addition to those Sardine Fishery Permits previously issued by the Department in calendar year 2006, the Department shall issue a Sardine Fishery Permit to any individual or entity, if that individual or entity held a legally qualified Oregon Developmental Fisheries Permit for Sardines on August 1, 2005, provided that neither the individual or entity has been previously issued an Oregon Sardine Fishery Permit in 2006.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 149-2008, f. & cert. ef. 12-17-08

### 635-006-1085

#### Lottery for Certain Limited Entry Fisheries

(1) A lottery process is provided in all limited entry fisheries except ocean Dungeness crab and sardines.

(2) A lottery for issuance of permits shall be conducted as follows:

(a) Gillnet salmon — see ORS 508.792;

(b) Troll salmon — see ORS 508.819;

(c) Shrimp — see ORS 508.904;

(d) Scallop — see ORS 508.861. If the number of permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 25;

(e) Roe-herring — If the number of permits issued in accordance with OAR 635-006-1035 falls below six, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed six;

(f) Sea Urchin:

(A) If the total number of permits which have been renewed, and/or for which an appeal is pending, with the Commercial Fishery Permit Board and/or awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April;

(B) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery;

(C) An individual may not already hold a valid urchin permit, however, an individual whose permit is at issue in a pending Sea Urchin Permit Board proceeding or before a court of law may participate in the lottery;

(D) If a permittee whose permit is at issue either before the Sea Urchin Permit Board or a court of law is awarded another permit through the lottery and thereafter prevails before the Board or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit is held;

(E) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or postmarked no later than April 15 of the year for which the permit is to be issued. An individual shall not submit more than one application to participate in the lottery. For successful applicants, the application fee shall apply toward the permit fee of \$75;

(F) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and placed on an alternate list in the order in which they were drawn, and shall be issued permits during the next 24 months as they may become available through Permit Board actions or surrender of permits by a permit holder;

(G) An individual whose name is drawn in the lottery shall thereafter apply on the prescribed form, to the Department to obtain a permit. Such application must be received by the Department within 30 days of the date the notification was mailed to the successful applicant following the lottery;

(H) Any individual who fails to apply for the lottery permit within 30 days shall forfeit such permit. The permit shall then be made available to the first name on the alternate list, and shall be applied for in accordance with section (G) of this rule;

(I) If all permits are not issued by renewal or through the lottery, permits thereafter may be issued on a first come first served basis up to the total number of permits allowed. All applications shall be mailed to the Department and priority shall be based on postmark or date-stamped date;

(J) The Commission may suspend the lottery for up to two years based upon its assessment of the condition of the resource and recommendations of the Sea Urchin Permit Review Board.

(g) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.955. If the number of permits issued in accordance with 508.947 falls below 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 80 for blackrockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement.

(h) Brine Shrimp — If the number of permits issued in accordance with OAR 635-006-1035 falls below three, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed three;

(i) Bay clam dive fishery — If the number of permits issued in accordance with OAR 635-006-1035 falls below ten for coast-wide permits or five for south-coast permits, the Department may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed ten for coast-wide permits or five for south-coast permits;

(3) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(4) Application for vessel permits shall only be accepted for vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting the permitted species are not eligible for the lottery.

(5) Only one application per vessel may be submitted for each permit fishery lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline will not be entered in the lottery. Applications for all permits will be accepted at the Salem headquarters office of the Department, and shall be postmarked or date stamped no later than June 30 of the year for which the permit is issued.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 70-2004(Temp), f. & cert. ef. 7-

# ADMINISTRATIVE RULES

12-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 149-2008, f. & cert. ef. 12-17-08

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**Rule Caption:** Establish 2009 Seasons and Regulations for Game Mammals.

**Adm. Order No.:** DFW 150-2008

**Filed with Sec. of State:** 12-18-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 9-1-2008

**Rules Amended:** 635-045-0000, 635-045-0002, 635-060-0000, 635-060-0009, 635-060-0055, 635-065-0001, 635-065-0401, 635-065-0625, 635-065-0740, 635-065-0760, 635-066-0000, 635-066-0010, 635-066-0020, 635-067-0000, 635-067-0004, 635-072-0000, 635-080-0050, 635-080-0051, 635-080-0062, 635-080-0063

**Subject:** Establish 2009 hunting regulations for game mammals, including season date, 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

## 635-045-0000

### Purpose

(1) The purpose of these rules is to list definitions pursuant to hunting seasons for big game and game birds.

(2) The documents entitled “2008–2009 Oregon Game Bird Regulations”, and “2009 Oregon Big Game Regulations”, are incorporated by reference into these rules. These documents are available at hunting license vendors and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[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 36-1988, f. & cert. ef. 6-13-88; FWC 47-1989, f. & cert. ef. 7-25-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 91-1990, f. & cert. ef. 9-4-90; FWC 42-1996, f. & cert. ef. 8-12-96; FWC 53-1997, f. & cert. ef. 9-3-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 75-1998, f. & cert. ef. 9-4-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 90-2008, f. & cert. ef. 8-13-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-045-0002

### Definitions

(1) “Adult hunting license” is a resident or nonresident hunter’s license, resident combination angler’s and hunter’s license, disabled war veteran’s license, pioneer’s hunting license or senior citizen’s hunting and fishing license.

(2) “Agricultural lands” are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) “Antler Point” is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) “Antlerless deer” means doe or fawn deer.

(5) “Antlerless elk” means cow or calf elk.

(6) “Application” means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.

(7) “Baited Area” means an area where baiting has taken place.

(8) “Baiting” means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(9) “Brace” is defined as an orthosis that is prescribed by a physician and fabricated by an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.

(10) “Brace Height” is the distance from the back of the bow’s riser at the handgrip to the string when the bow is at rest.

(11) “Buck Deer” means a male deer with at least one visible antler.

(12) “Buck Pronghorn” means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(13) “Bull elk” for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(14) “Calendar year” means from January 1 through December 31.

(15) “Carcaass” is the skinned or unskinned body, with or without entrails, of a gamebird or game mammal.

(16) “Cascade elk” means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Sprague units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(17) “Closed season” is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(18) “Coast elk” means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(19) “Commission” means the Oregon Fish and Wildlife Commission.

(20) “Controlled hunt” is a season where the number or distribution of hunters is limited through a public drawing or other means.

(21) “Department” means the Oregon Department of Fish and Wildlife.

(22) “Director” means the Oregon Fish and Wildlife Director.

(23) “Doe or fawn pronghorn” means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawns (young of the year) of either sex.

(24) “Domestic partner” as used in this rule means a person in a relationship with another person, each of whom:

(a) Is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) Acknowledges and accepts financial obligations to the other person and to third parties equivalent to the financial obligation that arise within a marriage recognized under Oregon state law; and

(d) Is not married and has no similar commitment and responsibility to any other person.

(e) Has continuously lived for 6 months with the other person

(25) “Eastern Oregon” means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(26) “Eastern Oregon deer” means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(27) “Eligible Hunter” means someone who will be 12 years of age by the time they hunt.

(28) “Entry permit” means a permit issued by the Department to be in an area where entry is restricted by regulation.

(29) “Established airport” is one that the Aeronautics Division has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(30) “Feral Swine” means animals of the genus *Sus* as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(31) “Fiscal year” means from July 1 through June 30.

(32) “Furbearers” are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(33) “Game Birds” are any waterfowl, snipe, band-tailed pigeon, dove, pheasant, quail, partridge, grouse, or wild turkey.

(34) “Game mammals” are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

(35) “General season” is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

(36) “Hunter certification” means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(37) “Hunt” means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(38) “Husbandry” means the care given animals directly by their owners and managers, including but not limited to:

(a) Nutrition;

(b) Breeding program;

(c) Veterinary medical care;

(d) Environmental cleanliness; and

## ADMINISTRATIVE RULES

(e) Humane handling.

(39) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(40) "Inedible" means unfit for human consumption.

(41) "Landowner", as used in OAR chapter 635, division 075, means:

(a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or

(b) A corporation holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation shall be registered with the State of Oregon; and/or

(c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or

(d) Persons who hold title as part of a time share are not eligible for landowner preference.

(42) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(43) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(44) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(45) "On or within" means a straight line distance measured on a map.

(46) "One deer" means a buck, doe, or fawn deer.

(47) "One elk" means a bull, cow, or calf elk.

(48) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.

(49) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for

(50) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(51) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(52) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(53) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(54) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(34) "game birds" as defined in 635-045-0002(33), "furbearers" as defined in 635-045-0002(32), "threatened and endangered species" as defined in 635-100-0125, and "nongame wildlife protected" as defined in 635-044-0130.

(55) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(56) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(57) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(58) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(59) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(60) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97;

north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(61) "Sabot" A carrier, bushing or device in which a projectile of a smaller caliber is centered so as to permit firing the projectile within a larger caliber weapon. Cloth, paper or felt patches used with round balls are not considered a sabot.

(62) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(63) "Sight bait" is exposed flesh bait within 15 feet of any leghold trap set for carnivores.

(64) "Spike deer" is a deer with spike (unbranched) antlers.

(65) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (brow tines are not considered an antler branch under spike-only regulations).

(66) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002 (41) (b).

(67) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(68) "Take" means to kill or obtain possession or control of any wildlife.

(69) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(70) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90° or greater.

(71) "Unprotected Mammals and Birds" are European starling, house sparrow, rock pigeon and any mammal species for which there are no closed seasons or bag limits.

(72) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(73) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(74) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(75) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(76) "Waterfowl" means ducks, geese, mergansers and coots.

(77) "Weapon" is any device used to take or attempt to take wildlife.

(78) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(79) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(80) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(81) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(82) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(83) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

[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 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f.



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& cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 52-2008, f. & cert. ef. 5-28-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-060-0000

### Purpose and General Information

(1) The purpose of these rules is to describe the requirements and procedures for controlled hunts pursuant to ORS 496.162.

(2) The documents entitled “2008–2009 Oregon Game Bird Regulations”, and “2009,” are incorporated by reference into these rules. These documents are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[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 118, f. & ef. 6-3-77; FWC 25-1978, f. & ef. 5-26-78; FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 16-1985, f. & ef. 4-11-85; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 40-1987, f. & ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 90-2008, f. & cert. ef. 8-13-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-060-0009

### Successful Applicants

Successful controlled hunt applicants must purchase the controlled hunt tag or permit for the hunt in which they were successful from a department license agent connected to the computerized licensing system within the following dates:

(1) Spring black bear controlled hunts tag sales begin February 20, each year and end at 11:59 pm, Pacific Time, the day before the season start date.

(2) Pronghorn antelope, deer and elk controlled hunts tag sales begin June 20 each year and end at 11:59 pm, Pacific Time, the day before the season start date for which the tag is valid.

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

Stats Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 44-1996(Temp), f. 8-12-96, cert. ef. 8-14-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 6-1999(Temp), f. & cert. ef. 2-9-99 thru 2-19-99; DFW 12-1999(Temp), f. & cert. ef. 2-25-99 thru 6-30-99; Administrative correction 11-17-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 4-2002(Temp), f. & cert. ef. 1-3-02 thru 2-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; Administrative correction, 2-18-05; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-060-0055

### Documents Required in Field

(1) A person hunting in any controlled game mammal hunt shall have on his or her person a valid hunting license, Hunter Education Certificate (for persons less than 18 years old), and a controlled hunt tag (if applicable) for the area and season being hunted. The hunting license number shall be the same as that indicated on the controlled hunt tag. Exception: Controlled hunts continuing or occurring after December 31, 2008 will have a 2009 hunting license number on the controlled hunt tag.

(2) A tag or permit holder for a hunt after December 31, 2008 shall have on his or her person a valid 2009 hunting license.

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

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

Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 14-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 36-1993, f. & cert. ef. 6-14-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 4-2003, f. 1-17-03, cert. ef. 4-1-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-065-0001

### Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals 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 game mammals. 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.

[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 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-065-0401

### Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11:59 pm, Pacific Time, October 2, 2009.

(2) No deer bow tag shall be issued after 11:59 pm, Pacific Time, August 28, 2009.

(3) No bear tag shall be issued after 11:59 pm, Pacific Time, October 2, 2009.

(4) No cougar (mountain lion) tag shall be issued after 11:59 pm, Pacific Time, October 2, 2009.

(5) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11:59 pm, Pacific Time, October 27, 2009.

(6) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11:59 pm, Pacific Time, November 6, 2009.

(7) No Coast First Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 13, 2009.

(8) No Coast Second Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 20, 2009.

(9) No Cascade Elk Rifle Tag shall be issued after 11:59 pm, Pacific Time, October 16, 2009.

(10) No elk bow tag shall be issued after 11:59 pm, Pacific Time, August 28, 2009.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; 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 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-065-0625

### Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): Closed to all public entry except walk-in deer hunting prior to November 1.

## ADMINISTRATIVE RULES

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry is by permit only December 1 through April 30.

(3) Cascade Head — Lincoln City Area: The Cascade Head — Lincoln City Area shall be closed to hunting with centerfire rifles, muzzle-loaders, or handguns. Hunting shall be restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head — Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR 2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): All Bureau of Land Management lands within or contiguous to BLM lands within T22S R11W (including Spruce Reach Island located adjacent to Hwy. 38 and between the outlets of Koapke and Hinsdale Sloughs) are closed to hunting. Also, other lands located within the following boundary are closed to hunting during all elk and deer seasons that pertain to this area: beginning at the intersection of Schofield Rd. and Hwy. 38, south on Schofield Rd. to its intersection with Hakki Ridge Rd., east on Hakki Ridge Rd. to the crest of Hakki Ridge, east along the crest of Hakki Ridge to its intersection with the BLM boundary located in T22S, R11W Section 4, easterly along the BLM boundary to Hwy. 38, west on Hwy 38 to point of beginning.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (NBHMA; previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area shall be closed to all big game hunting except for and during controlled hunts specific to the management area NBHMA by hunters possessing a controlled hunt tag for the area. Elk hunting will be allowed by hunters who possess a valid NBHMA controlled hunt tag in addition to a valid elk tag.

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bow hunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting is by permit only. Permits are available at area headquarters and shall be filled out and returned each day hunting. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Enterprise Wildlife Area (Wallowa County): Open to hunting seven days a week. No entry permit is required. Posted portions of the area lying south of the Union Pacific Railroad line and the entire Marr Tract are closed to all hunting.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons, except that East and West Coyote units are closed after October 31, and hunting in Fisher Butte Unit after October 31 is limited to Saturdays, Sundays, and Wednesdays, Thanksgiving Day, Christmas Day, New Year's Day, and Veteran's Day only. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, and Royal Amazon units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 29 through September 27, 2009 under the regulations for bowhunting seasons.

(b) Portions of the refuge shall be open to hunting for buck deer October 3 through October 31, 2009 under regulations for the general western Oregon deer buck season. Use of rifles is prohibited.

(c) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to county roads.

(15) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns are prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season. The refuge is open for pronghorn antelope and bighorn sheep auction and raffle tag holders but is closed for Access and Habitat deer and elk auction and raffle tag holders.

(18) Heppner Regulated Hunt Area: Bowhunting, open fires and camping prohibited in posted areas. Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season. It is unlawful to shoot rifles and bows from or across open fields during any open Saddle Mountain Unit or Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: All land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. The area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: Closed to deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road shall be closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 shall be closed to all hunting.

(26) Lower Deschutes Wildlife Area: Open to hunting of big game, game birds, and waterfowl during authorized seasons. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(27) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 shall be open during authorized rifle and bow deer seasons.

(28) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(29) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(30) Metolius Wildlife Refuge (Jefferson County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

## ADMINISTRATIVE RULES

(31) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(32) Newberry Crater Wildlife Refuge (Deschutes County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(33) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(34) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(35) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(36) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 29 through September 27, 2009, except Oak Island (Multnomah-Columbia Cos) is closed to deer hunting and Sturgeon LK Refuge is closed to all hunting. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 27, 2009. Closed to hunting for furbearers, predators, unprotected and protected wildlife (except black-tail deer and game birds). Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(37) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 30, or year-round; including BLM land within the exterior boundaries of the Wildlife Area.

(38) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(39) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(40) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The 12-foot right-of-way along each side of all 8-foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually. Access and Habitat auction or raffle tag holders are not eligible to hunt in the Starkey Experimental Forest enclosure.

(41) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from Mar. 15–Aug. 15 and 3 days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit. Centerfire rifles and handguns are prohibited for deer hunting.

(42) Umatilla Refuge (Morrow County): This refuge shall be closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR Chapter 635, Division 078.

(43) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(44) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(45) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

(45) White River Wildlife Area: Open to hunting during authorized seasons.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

### 635-065-0740

#### Hunting Prohibited

It is unlawful:

(1) To hunt with a centerfire or muzzleloading rifle during eastern Oregon controlled buck season (October 3–October 14, 2009 Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 21–Nov. 29, 2009) without a valid, unused tag for that species, time period and area on their person.

EXCEPTION: Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

EXCEPTION: Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagonfire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 21–Nov. 29, 2009).

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (4) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the department.

(7) To hunt protected wildlife except:

(a) by a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

(9) To engage in computer-assisted hunting (internet hunting) or provide or operate facilities for computer-assisted hunting in Oregon. As used in this act, "computer-assisted hunting" (internet hunting) means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm, bow, or any other weapon to hunt any game bird, wildlife, game mammal, or other mammal, and "facilities for computer-assisted remote hunting" means real property and improvements on the property associated with hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting. Nothing in subsection (9) of this section prohibits the use computer-assisted hunting by employees or agents of county, state or federal agencies while acting in their official capacities.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004,



# ADMINISTRATIVE RULES

f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-065-0760

### Other Restrictions

It is unlawful:

- (1) To take or hold in captivity the young of any game mammal.
- (2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.
- (3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.
- (4) To resist game law enforcement officers.
- (5) To refuse inspection of any license, tag or permit by an employee of the department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his land.
- (6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.
- (7) To disturb, damage, remove, alter or possess any official department signs.
- (8) To sell, lend, or borrow any big game tag.
- (9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2 round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:
  - (a) North Coast Access Area: Three days prior to opening of general archery season through December 1 — Applies to all gated, posted, and/or barrier-closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units.
  - (b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;
  - (c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;
  - (d) Luckiamute: Permanent Closure — Those parts of the Stott Mt. /Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.
  - (e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: posted and barrier closed roads (including bermed) in the Siuslaw National Forest lands south of US Hwy 20 and north of state Hwy 126;
  - (f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;
  - (g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;
  - (h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;
  - (i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season. That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;
  - (j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;
  - (k) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.
  - (l) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: High Cascades Ranger District, Rogue River National Forest;
  - (m) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 104 square miles in Townships 32, 33, 34, and 35

South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(n) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(o) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(p) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(q) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(r) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(s) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(t) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(u) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(v) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(w) Murderers Creek-Flagtail: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(x) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(y) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27, and 28 East;

(z) Bridge Creek Wildlife Area: December 1 through April 30 annually — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(aa) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(bb) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(cc) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(dd) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ee) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(ff) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

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(gg) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(hh) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(ii) Hall Ranch: Three days prior to the opening of Rocky Mt bull elk first season through April 30 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(jj) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;

(kk) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(ll) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(mm) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(nn) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(oo) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(pp) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East.

(qq) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(rr) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season- That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(ss) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(tt) Mehlorn: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(uu) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(vv) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(ww) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(xx) Eagle Creek: December 1 — April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(yy) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(zz) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season —

That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(aaa) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(bbb) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ccc) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(ddd) North Paunina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(eee) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(fff) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(ggg) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(hhh) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(iii) Hells Canyon National Recreation Area: Permanent Closure — Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(jjj) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(kkk) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(lll) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

### 635-066-0000

#### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting 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

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for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[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 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-066-0010

### General Season Regulations

(1) Pursuant to ORS 497.112, annual black bear tag sales to nonresident black bear hunters for the general fall season shall be limited to no more than three percent of the total tag sales based on previous year's hunter densities.

(a) Tags shall be available at any authorized license agent and through the Salem Headquarters office on a first-come, first-served basis.

(b) The application procedure shall be as follows:

(A) An applicant may purchase a nonresident general black bear tag at any hunting license agent or;

(B) An applicant shall mail or fax copies, through the Salem Headquarters only, of his/her nonresident driver's license or adult nonresident hunting license or provide documentation which includes the following information:

(i) Applicant's full name and current address;

(ii) Applicant's date of birth;

(iii) Applicant's Social Security number;

(iv) Applicant's telephone number;

(c) An applicant shall include a fee of \$151.50 with the application.

(d) The applicant shall state the areas for which he/she is applying in order of choice.

(2) Open Area: The entire state is open, except that lands within one mile of the Rogue River between Grave Creek and Lobster Creek are closed to all black bear hunting. Nonresidents shall be restricted to hunting black bear only in specific areas as described below.

(a) Nonresident black bear tags shall be distributed by areas as described in the Black Bear Management Plan. These areas are described as follows:

(A) Northwest: All of wildlife management units: 10, 11, 12, 14, 15, 17, and 18.

(B) Southwest: All of wildlife management units: 20, 23, 24, 25, 26, 27, 28, and 29.

(C) Cascades: All of wildlife management units: 16, 19, 21, 22, 30, 31, 34, 39, 41, and 42 and those portions of wildlife management units 33 and 77 lying west of Highway 97.

(D) Eastern: All of wildlife management units: 32, 35, 38, 40, and 43 and those portions of wildlife management units 33 and 77 lying east of Highway 97; and all other wildlife management units to the east of these units.

(3) No person shall use dogs to hunt or pursue black bear.

(4) No person shall use bait to attract or hunt black bear.

(5) The skull of any bear taken must be presented to an ODFW office or designated collection site, by the person who took the animal, within 10 days of the kill to be checked and marked. Skull must be unfrozen when presented for check-in. Checkout at ODFW offices must occur during normal business hours (8–5, Mon–Fri.). Hunters are required to check in the skull only for the purpose of inspection, tagging and removal of a tooth for aging.

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 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-066-0020

### Controlled Seasons

(1) Tags will be issued by way of a controlled hunt drawing. The number of tags issued to nonresidents will be limited to no more than three percent of the total tags authorized for each hunt. Persons receiving a controlled black bear tag may also purchase a general season black bear tag and one SW Oregon additional bear tag and one "leftover" controlled spring bear tag.

(2) No person shall use dogs to hunt or pursue black bear.

(3) No person shall use bait to attract or hunt black bear.

(4) The skull of any bear taken must be presented to an ODFW office or designated collection site, by the person who took the animal, within 10 days of the kill to be checked and marked. Skull must be unfrozen when presented for check-in. Checkout at ODFW offices must occur during normal business hours (8–5, Mon–Fri.). Hunters are required to check in the skull only for the purpose of inspection, tagging and removal of a tooth for aging.

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; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-067-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2009 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables referenced are available from the agency.]

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

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-067-0004

### Cougar Hunting Regulations

(1) Tag Requirement: Any person hunting cougar shall have on his/her person a general season cougar tag or an additional cougar tag. General season cougar tags may be purchased through any authorized license agent;

(2) Hunt Area: Hunt zones, and harvest quotas for each hunt zone, are established in OAR 635-067-0015;

(a) Hunters may hunt within all hunt zones;

(b) Hunt zones will be closed to hunting when individual zone harvest quotas are reached.

(3)(a) All hunters are required to check in the hide with skull and proof of sex attached of any cougar killed within ten days of harvest at a Department of Fish and Wildlife office. Hide and skull must be unfrozen when presented for check-in;

(b) Hunters are also required to submit the reproductive tract of any female cougar taken.

(4) No person shall hunt or assist another to hunt a cougar during an authorized cougar season unless in possession of an unused cougar tag or accompanied by the holder of an cougar tag which is valid for that area and time period.

(5) No person shall use dogs to hunt or pursue cougar.

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 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02;



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DFW 2-2003, f. & cert. ef. 1-17-03; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-072-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. 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.

[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 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-080-0050

### Desolation Unit

The Desolation Unit, number 50, is that area beginning at Dale on U.S. Highway 395; southeast along North Fork John Day River to Big Creek; northeast along Big Creek to Meadow Creek; northeast along Meadow Creek to Forest Road 5225 at Forks Guard Station; northwest on Forest Road 5225 to Granite-Ukiah Road 52; southeast on Granite-Ukiah Road 52 to Anthony Lakes Road 73; northeast on Anthony Lakes Road 73 to summit of Blue Mountains west of Anthony Lakes; south along summit of Blue Mts. to the summit of Anthony Lakes Ski Area (junction of Grant, Baker, and Union counties) southwest along Blue Mountain summit (Baker/Grant county line) to State Highway 7; southwest on State Highway 7 to Co Rd 20; northwest on Co Rd 20 to U.S. Highway 395; north on U.S. Highway 395 to Dale, point of beginning.

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

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

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 39-1982, f. & ef. 6-25-82; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-080-0051

### Sumpter Unit

The Sumpter Unit, number 51, is that area beginning at Ironside; northwest on U.S. Highway 26 to Austin junction; northeast on State Highway 7 to summit of Blue Mountains (Tipton Summit); northeast along Blue Mountain summit (Baker/Grant County line) to the Summit of Anthony Lakes Ski Area (junction of Grant, Baker, and Union counties); north along the Blue Mt summit to Anthony Lakes Road 73; northeast on Anthony Lakes Road to Ellis Rd; north on Ellis Rd to North Powder River Ln; east on North Powder River Ln to Interstate Highway 84 at North Powder; southeast on Interstate Highway 84 to Durbin Creek Road overpass; west on Durbin Creek-Malheur Reservoir Road to Ironside, point of beginning.

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

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

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 32-1980, f. & ef. 6-30-80; FWC 39-1982, f. & ef. 6-25-82; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 122-2006(Temp), f. & cert. ef. 11-17-06 thru 5-15-07; Administrative Correction, 5-16-07; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-080-0062

### Pine Creek Unit

The Pine Creek Unit, number 62, is that area beginning at Cornucopia; north on Blue Creek Trail (1865) to the summit of Eagle Mountains; west and south along summit of Eagle Mountains to Red Mt; west and south on summit of Eagle Mts to Crater Lake; north and west on summit of Eagle Mts to Krag Peak; north on summit of Eagle Mts to Jackson Peak; north to Hawkins Pass; east and north along South Fork Innaha River and Innaha River to Dry Creek; southeast along Dry Creek and northeast along North Fork Dry Creek to Summit Road; north and northeast on Summit Road to Thirty-two Point Creek; east along Thirty-two Point Creek to Snake River; south along Snake River to the mouth of

Powder River; west along Powder River arm of Brownlee Reservoir to the old Richland-Halfway Highway (Sag Road); north on Sag Road to Highway 86; northeast on Highway 86 to Pine Creek; northwest along Pine Creek to Cornucopia, point of beginning.

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

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

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 46-1988, f. & cert. ef. 6-13-88; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 36-1993, f. & cert. ef. 6-14-93; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-080-0063

### Keating Unit

The Keating Unit, number 63, is that area beginning at North Powder; northeast and southeast along Powder River to State Highway 203; northeast on State Highway 203 to Medical Springs; southeast and northeast on Big Creek Road 67 to Lick Creek; north on Lick Creek Road 6750 to Forest Road 6750300; east on Forest Road 6750300 to Forest Road 6730310; east on 6730310 to Forest Road 6730; north on 6730 to Forest Road 77; east on Forest Road 77 to Flagstaff Butte Road 7700582; east on road 7700582 to Flagstaff Butte; north along the divide between the Catherine Creek and Eagle Creek drainages to Granite Butte; east along summit of Eagle Mountains to Hawkins pass; south to Jackson Peak; south to Krag Peak; south and east to Crater Lake; north and east to Red Mt; north and east to Blue Creek Trail (1865) north of Cornucopia; south along Blue Creek Trail to Pine Creek; south and east along Pine Creek to State Highway 86; southwest on State Highway 86 to Old Richland-Halfway Highway (Sag Road); south on Sag Road to Powder River arm of Brownlee Reservoir; west along Powder River to State Highway 86 near Goose Cr; west on Highway 86 to Interstate Highway 84; north on Interstate Highway 84 to North Powder, point of beginning.

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

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

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 32-1980, f. & ef. 6-30-80; FWC 35-1986, f. & ef. 8-7-86; FWC 46-1988, f. & cert. ef. 6-13-88; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 36-1993, f. & cert. ef. 6-14-93; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09

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**Rule Caption:** Rules related to Holding of Cervids.

**Adm. Order No.:** DFW 151-2008

**Filed with Sec. of State:** 12-18-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 3-1-2008

**Rules Adopted:** 635-049-0235

**Rules Repealed:** 635-049-0210

**Subject:** Rules that govern holding and propagation of cervids in Oregon, and related rules.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-049-0235

### Reporting

(1) Each licensee must:  
(a) Within 30 days after the birth of any calf in its facility, report that birth to the Department; and  
(b) By January 31 each year, submit to the Department an annual report for the previous year.

(2) A calving/fawning report must list all cervid calves/fawns born on the facility to date and the identifying marks applied to each new calf/fawn.

(3) An annual report must:  
(a) Provide details of any and all changes in cervid inventory (deaths, births, slaughter, sale, purchase, transfer, etc).  
(b) Provide details of any escape or release.

(c) Summarize results of disease testing; and  
(d) Summarize results of any artificial fertilizations or embryo implants.

(4) A license shall be revoked if any required report is not submitted by the required date, or does not satisfy the reporting requirements set forth in this section.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Hist.: DFW 151-2008, f. 12-18-08, cert. ef. 1-1-09

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**Rule Caption:** Rules related to the capture of Peregrine Falcons for use in Falconry.

**Adm. Order No.:** DFW 152-2008

**Filed with Sec. of State:** 12-18-2008

# ADMINISTRATIVE RULES

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 635-055-0037

**Rules Amended:** 635-055-0035

**Subject:** Amended rules related to the capture of Peregrine Falcons to be used in the practice of Falconry. Consider new draw process for Peregrine Falcon Capture permits.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-055-0035

### Capture and Transportation of Raptors

A raptor capture permit is required prior to capturing or attempting to capture any raptor. A non-resident falconer from a state having a federally approved falconry program may obtain a capture permit for a red-tailed hawk, Cooper's hawk, sharp-shinned hawk, prairie falcon, peregrine falcon, great horned owl, golden eagle or American kestrel only. All non-resident applications must include copies of current state and federal falconry permits. All applicants for golden eagle capture must include a copy of the federal authorization to take golden eagles. Only 20 non-resident capture permits will be issued in total each capture season. All non-resident capture permits, except for capture permits for peregrine falcons, will be issued on a first come first served basis.

(1) An application fee of \$10 will be charged for each capture permit allowing the capture of one raptor per permit.

(2) Except for take of nestling (eyas) peregrine falcons, the Department will issue capture permits in the order applications are received. The permit process will begin January 1st of each year, and applicants must hold a valid Oregon falconry license. The category of species shall be listed on the permit (e.g. "golden eagle", "gyrfalcon", "eyas peregrine falcon", or "other raptor") and the falconer is authorized to take only one raptor from the category specified. A falconer may apply for a capture permit in more than one category. The falconer whose name appears on the permit must do the capturing except for peregrine falcon nestlings; the permit is not transferable.

(3) Capture permit applications for nestling peregrine falcons may be submitted to the Department beginning January 1st and received no later than March 1st of each year. The Department will issue peregrine falcon capture permits by way of a lottery draw pursuant to OAR 635-055-0037. Of the number of permits available for issuance annually, the Department will make one such permit available to nonresidents. Each permit will include conditions crafted by the Department on a case by case basis to address the particular proposal to capture peregrine falcons. Such conditions may include, but are not limited to, requirements to protect the safety of falconers and other humans during capture of peregrine falcons, and shall specify where the permittee may capture peregrine falcons. The following general conditions apply to all peregrine falcon capture permits:

(a) Young falcons may be removed from their eyries from May 15th to June 30th daily and when only between 15 and 24 days of age. At least one nestling must be left in each eyrie prior to fledging. A young (fledgling) peregrine falcon may be taken up to 30 days after leaving the nest.

(b) Permittee must be present when the nestling is being removed from the eyrie.

(c) Take of passage peregrine is unlawful.

(d) Each falconer who takes a peregrine falcon from the wild must report the sex and precise capture location to the Department and the U.S. Fish and Wildlife Service within 5 days after. If the falconer later determines that the sex of any peregrine falcon taken was reported incorrectly, then the falconer must submit a corrected report as soon as possible after discovering the error.

(e) Falconers must band each peregrine falcon taken with a band provided by the Department.

(f) After a captured falcon reaches 30 days of age, the falconer must pluck breast feathers from the falcon and submit them to the U.S. Fish and Wildlife Service, along with a written record of the precise location of where the bird was taken from in the wild. The address for submission is U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203-1610.

(4) Upon taking the raptor authorized, the permittee shall immediately validate the permit by recording the date, species, sex, county, and capture method and signing his/her name in the space provided. At the time of capture, the permittee shall affix the permanent plastic band, issued with the permit, to one leg of the bird. Within five business days of capture, the permittee shall take the bird to a Department office to have the permit certified.

(5) Lost, raptors at hack, or captive bred raptors may be retrapped at anytime without a capture permit. All other raptors captured shall be immediately released.

(6) Exportation of wild caught raptors — No raptor taken from the wild in Oregon shall be transferred to another person residing outside the state except those Oregon wild caught raptors held for six months or longer may be transferred to another person residing outside the state.

(7) An Oregon licensed falconer is allowed to retain legally captured raptors in their possession if they move from Oregon.

(8) Falconers are responsible for treatment and rehabilitation costs of raptors taken for falconry and injured during trapping efforts.

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

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

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 14-1982, f. & ef. 2-25-82; FWC 11-1983, f. & ef. 3-24-83; FWC 8-1986, f. & ef. 3-6-86; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 40-1991, f. & cert. ef. 4-24-91; FWC 33-1992(Temp), f. & cert. ef. 5-11-92; FWC 116-1992, f. & cert. ef. 10-28-92; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08; DFW 152-2008, f. 12-18-08, cert. ef. 1-1-09

## 635-055-0037

### Peregrine falcon capture permit process

(1) The Department will conduct the lottery to award peregrine falcon capture permits by drawing names of eligible entrants at random. To participate in the lottery, a person must:

(a) (If an Oregon resident) possess a current Master Falconers license as per OAR 635-055-0002 or (if a non-resident) possess a Master Falconers license from a state having a federally approved falconry program; and

(b) Pay the Department a \$10 application fee. Application fees are nonrefundable, whether or not an applicant is successful in the drawing.

(2) Peregrine capture permit applications (including fees) must be submitted to the Department's Salem headquarters office no later than March 1 each year.

(a) If hand delivered, an application must be received at Department headquarters office (3406 Cherry Ave, NE, Salem, OR, 97303) by 5:00 p.m. on March 1.

(b) If sent via postal mail, an application must be postmarked no later than March 1.

(3) If an applicant violates any of the following restrictions, the Department will remove his or her application from the drawing.

(a) An applicant may submit only one peregrine capture permit application per capture season.

(b) An applicant must submit a completed application containing name, license number, address, and phone number.

(4)(a) During each year's lottery, the Department will draw six Oregon resident applications and two alternates, plus one non-resident application and a non-resident alternate.

(b) The Department will notify successful applicants and alternates by mail. If the applicant does not reply in writing (mail, fax, or email) within 10 calendar days, the applicant will be disqualified and the Department will offer the permit to the next alternate. If neither alternate replies in the required time, the permit will not be issued.

(5) Peregrine falcon capture permits are not transferable.

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

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

Hist.: DFW 152-2008, f. 12-18-08, cert. ef. 1-1-09

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**Rule Caption:** Set the Harvest Quota for the Commercial Roe Herring Fishery in Yaquina Bay.

**Adm. Order No.:** DFW 153-2008(Temp)

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 1-1-09 thru 4-15-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0027

**Subject:** Amended rule sets the 2009 harvest quota for the Yaquina Bay commercial roe herring fishery.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0027

### Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

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(a) The open season for the taking of herring is January 1 through December 31.

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1 through April 15, 2009 is 19 tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(d) During the period January 1 through April 15 it is *unlawful* to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursing rings on the purse line; lampara net; hook and line "jigging;" or eggs-on-kelp method.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84, FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04; Administrative correction 8-2-04; DFW 119-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 4-15-05; Administrative correction 4-20-05; DFW 143-2005(Temp), f. 12-16-05, cert. ef. 1-1-06 thru 4-15-06; Administrative correction 4-19-06; DFW 132-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 4-15-07; DFW 133-2007(Temp), f. 12-26-07, cert. ef. 1-1-08 thru 4-15-08; Administrative correction 4-23-08; DFW 153-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 4-15-09

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**Rule Caption:** Revised Nearshore Species Cumulative Trip Limits for Commercial Nearshore Fishery.

**Adm. Order No.:** DFW 154-2008(Temp)

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 1-1-09 thru 6-29-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0033

**Subject:** Amended rule revises the cumulative trip limit for vessels having a limited entry black rockfish and blue rockfish permit and vessels having a black rockfish and blue rockfish period 1 cumulative trip limit from 600 to 800 pounds and the black rockfish and blue rockfish period 2 cumulative trip limit from 800 to 1,000 pounds.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0033

### Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Shelf Rockfish;
- (b) Minor Slope Rockfish;
- (c) Black and Yellow Rockfish;
- (d) Brown Rockfish;
- (e) Calico Rockfish;
- (f) China Rockfish;
- (g) Copper Rockfish;
- (h) Gopher Rockfish;
- (i) Grass Rockfish;
- (j) Kelp Rockfish;
- (k) Olive Rockfish;
- (l) Treefish;
- (m) Black Rockfish;
- (n) Blue Rockfish;

- (o) Cabezon;
- (p) Canary Rockfish;
- (q) Greenling;
- (r) Tiger Rockfish;
- (s) Vermilion Rockfish;
- (t) Widow Rockfish;
- (u) Yelloweye Rockfish;
- (v) Yellowtail Rockfish;
- (w) Darkblotched Rockfish;
- (x) Pacific Ocean Perch;
- (y) Longspine Thornyhead;
- (z) Shortspine Thornyhead;
- (aa) Arrowtooth Flounder;
- (bb) Dover Sole;
- (cc) Petrale Sole;
- (dd) Rex Sole;
- (ee) Other Flatfish;
- (ff) Lingcod;
- (gg) Sablefish;
- (hh) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2008, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2008, the commercial landing caps are:

- (a) Black rockfish and blue rockfish combined of 104.6 metric tons.
- (b) Other nearshore rockfish, 12.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 800 pounds in period 1;
- (b) 1000 pounds in period 2;
- (c) 1600 pounds in each of periods 3, 4, and 5; and
- (d) 800 pounds in period 6.
- (7) In each period, no vessel may land more than:
  - (a) 700 pounds of other nearshore rockfish, combined;
  - (b) 2,500 pounds of cabezon; or
  - (c) 450 pounds of greenling species.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-



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29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; Administrative Correction 1-24-08; DFW 70-2008(Temp), f. 6-26-08, cert. ef. 7-1-08 thru 12-27-08; DFW 123-2008(Temp), f. 9-30-08, cert. ef. 10-2-08 thru 12-31-08; DFW 154-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 6-29-09

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**Rule Caption:** Adopt Management Measures for the 2009 Sardine Fishery.

**Adm. Order No.:** DFW 155-2008(Temp)

**Filed with Sec. of State:** 12-30-2008

**Certified to be Effective:** 1-1-09 thru 6-29-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0016

**Subject:** Amended rule adopts management measures for the 2009 commercial sardine fishery, as approved by the Pacific Fishery Management Council in November 2008.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0016

### Harvest Guideline

This rule incorporates, by reference, the sardine management measures for 2009 included in the **Pacific Council List of Decisions for the November 2008 Pacific Fishery Management Council Meeting**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 69-2008(Temp), f. & cert. ef. 6-24-08 thru 12-20-08; DFW 89-2008(Temp), f. & cert. ef. 8-6-08 thru 12-31-08; DFW 116-2008(Temp), f. & cert. ef. 9-22-08 thru 12-31-08; DFW 155-2008(Temp), f. 12-30-08, cert. ef. 1-1-09 thru 6-29-09

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**Rule Caption:** Amend rules related to 2009 Oregon Sport Fishing Regulations.

**Adm. Order No.:** DFW 156-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 8-1-2008

**Rules Amended:** 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134, 635-039-0080, 635-039-0085, 635-039-0090

**Subject:** Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2009. Housekeeping and technical correction were made to ensure rule consistency.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-011-0100

### General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2009 Oregon Sport Fishing Regulations** by reference. 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**.

[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.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-

05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-013-0003

### Purpose and Scope

(1) The purpose of division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for 2008, included in the **Pacific Fishery Management Council — Adopted 2008 Ocean Salmon Management Measures and Impacts, dated April 2008**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the **2009 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the **Federal Regulations** may be obtained by contacting the Pacific Fishery Management Council at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

[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.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-013-0004

### Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2009 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2009 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2009 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

[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 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-19-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; 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 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002,

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f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 9-14-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-014-0080

### Purpose and Scope

(1) The purpose of division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 014 to determine all applicable sport fishing requirements for the Northwest Zone.

[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; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-014-0090

### Inclusions and Modifications

The **2009 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-016-0080

### Purpose and Scope

(1) The purpose of division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 016 to determine all applicable sport fishing requirements for the Southwest Zone.

[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; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-016-0090

### Inclusions and Modifications

The **2009 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-017-0080

### Purpose and Scope

(1) The purpose of division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 017 to determine all applicable sport fishing requirements for the Willamette Zone.

[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; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, 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 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f.

# ADMINISTRATIVE RULES

12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 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.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-

2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-017-0095

### Sturgeon Season

(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) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon four days per week, Thursday, Friday, Saturday and Sunday during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited August 1 through September 30.

(4) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-018-0080

### Purpose and Scope

(1) The purpose of division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 018 to determine all applicable sport fishing requirements for the Central Zone.

[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; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, 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 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-018-0090

### Inclusions and Modifications

The **2009 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

[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 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 15-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-1-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-



# ADMINISTRATIVE RULES

1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-019-0080

### Purpose and Scope

(1) The purpose of division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 019 to determine all applicable sport fishing requirements for the Northeast Zone.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, 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 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-019-0090

### Inclusions and Modifications

The **2009 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 and 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-021-0080

### Purpose and Scope

(1) The purpose of division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 021 to determine all applicable sport fishing requirements for the Southeast Zone.

[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; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-021-0090

### Inclusions and Modifications

The **2009 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-023-0080

### Purpose and Scope

(1) The purpose of division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates by reference the **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to division 011 and division 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

[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; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-023-0090

### Inclusions and Modifications

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**.

[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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-

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1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999 f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 35-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; 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 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 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 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(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 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-023-0095

### Sturgeon Season

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon four days per week, Thursdays through Sundays, during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30; and

(b) May 10 through June 24.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 9 and from June 25 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42 60 inches in overall length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 45 60 inches in overall length may be retained.

(8) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(9) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 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 from January 1 through April 15, 2008 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16 through April 30, 2008 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(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) Catch limits of two adult adipose fin-clipped salmon or two adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2009 Oregon Sport Fishing Regulations**.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through May 15, 2008, 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-



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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

## 635-023-0128

### Summer Sport Fishery

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2009 Oregon Sport Fishing Regulations**:

(a) Effective June 21 through June 28, 2008 the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult and jack chinook salmon; and

(b) Effective June 16 through July 31, 2008, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult and jack chinook salmon.

(c) The daily bag limit for adult salmon and adipose fin-clipped steelhead combined is two fish.

(d) Effective June 16 through July 31, 2008, the mainstem Columbia River is open to the retention of jack Chinook from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-023-0130

### Fall Sport Fishery

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2009 Oregon Sport Fishing Regulations**:

(a) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook; except:

(A) Retention of Chinook is prohibited during September 2 through December 31; and

(b) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook; except:

(A) Retention of Chinook is only allowed during September 1 through September 16; and

(B) Retention of Chinook is prohibited from August 1 through December 31 in the area bounded by a line projected from the lower end of Bachelor Island, Washington to the Warrior Rock Lighthouse, Oregon downstream to a line projected from navigation marker #62 at the head of Deer Island, Oregon to marker #63 on Martin Island, Washington.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05;

DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-023-0134

### Snake River Fishery

The **2009 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-039-0080

### Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2009 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2009 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions or News documents dated June and November 2006 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) as amended by Federal Regulations, and Title 50 of the Code of Federal Regulations, Part 660 Vol. 71, No. 189, dated December 29, 2006; to determine regulations applicable to this fishery.

[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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; 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 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

## 635-039-0085

### Halibut Seasons

The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Volume 73, Number 46, dated March 7, 2008 and as amended by Federal Regulations.

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

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07;



# ADMINISTRATIVE RULES

DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f.8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09

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*); killback (*S. maliger*); and treefish (*S. serriceps*).

(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: 5 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).

(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 Humber 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 Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annu-

al 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 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

# ADMINISTRATIVE RULES

**Rule Caption:** Implementation of New Fork Length Measurement Standard for Sturgeon Taken in Commercial Fisheries.

**Adm. Order No.:** DFW 157-2008(Temp)

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09 thru 6-29-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0090

**Subject:** Amended rule implements new measurement standards for commercially caught sturgeon in ocean waters. The new standards have already been adopted by the Columbia River Compact agencies of Oregon and Washington in concert with the Columbia River Inter-tribal Fish Commission for inland waters. Adopting these modifications insures consistency within Oregon's rules and eliminates confusion for fishers and law enforcement agencies.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0090

### Size Limit

(1) Except as provided in OAR 635-007-0700 through 635-007-0720 it is *unlawful* to:

(a) Take from the waters of this state or to land sturgeon for commercial purposes less than 43 inches or more than 54 inches in fork length;

(b) Remove the head or tail of any sturgeon taken from the waters of this state or landed for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(c) To possess, sell, or transport any whole sturgeon under 43 inches in fork length taken for commercial purposes in the waters of this state or the Pacific Ocean. Proof of possession, sale, or transportation of any dressed sturgeon under 28 inches in length exclusive of head and tail shall in itself create a permissible inference that the dressed sturgeon was under 43 inches in fork length at the time it was taken.

(2) Any person fishing with commercial fishing gear in the waters of this state who, on lifting, drawing, taking up or removing any such gear finds sturgeon entangled or caught therein which are not within the legal length limits set forth in section (1)(a) of this rule or during a season not open for sturgeon, shall immediately, with care and the least possible injury to the fish, disentangle, release and transfer the fish to the water without violence.

Stat. Auth.: ORS 506.119 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0130; Renumbered from 635-036-0120; FWC 39-1981, f. 10-30-81, ef. 1-1-81; FWC 33-1988, f. & cert. ef. 5-24-88; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 144-2005(Temp), f. 12-20-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 157-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09

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**Rule Caption:** Inseason Actions Implemented By the Federal Government for Commercial Groundfish Fisheries.

**Adm. Order No.:** DFW 1-2009(Temp)

**Filed with Sec. of State:** 1-5-2009

**Certified to be Effective:** 1-5-09 thru 5-1-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Subject:** Amended rule adopts in-season actions implemented by the federal government for commercial groundfish fisheries including changes to cumulative trip limits and RCA boundaries.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0019

### Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations.**

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 73, No.248/Wednesday December 24, 2008, announced inseason management measures effective January 1, 2009, including, but not limited to, changes to cumulative trip limits and RCA boundaries.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008, f. & cert. ef. 8-1-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09

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**Rule Caption:** Establish 2009 Seasons and Regulations for Game Mammals.

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

**Filed with Sec. of State:** 1-9-2009

**Certified to be Effective:** 1-9-09

**Notice Publication Date:** 9-1-2008

**Rules Amended:** 635-065-0765

**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

## 635-065-0765

### Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any pronghorn antelope, bighorn sheep, or Rocky Mountain goat without the animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, horns, and eyes if the animal is male.

(4) It is unlawful to possess the meat or carcass of any deer or elk without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer and elk is:

(a) Evidence of sex for deer and elk which will be taken out of Oregon is:

(A) For Bucks and Bulls: Either the head with antlers naturally attached to at least one quarter of the carcass or testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat. For hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(B) For Does and Cows: Either the head naturally attached to at least one quarter of the carcass or vulva or udder (mammary) naturally attached to one quarter of the carcass or to another major portion of meat.

(C) For Either Sex Hunts: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (testicles, scrotum, penis, vulva, udder, mammary) naturally attached to one quarter of the carcass or to another major portion of meat. For bucks or bulls killed in either sex hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the

## ADMINISTRATIVE RULES

highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(D) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(b) Evidence of sex for deer and elk which will not be taken out of Oregon is either:

(A) The animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, antlers, and eyes if the animal is male, or;

(B) The head naturally attached to at least one quarter of the carcass or reproductive organs naturally attached to one quarter of the carcass or to another major portion of meat as described in (4)(a)(i)–(iv) above.

(5) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the department.

(6) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the department or by the Oregon State Police.

(7) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the department or by the Oregon State Police.

(8) It is unlawful to receive or have in possession any game mammal or part thereof which:

- (a) Is not properly tagged;
- (b) Was taken in violation of any wildlife laws or regulations; or
- (c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(9) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the department or personnel of the Oregon State Police prior to transporting.

(10) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the department may be made available to scientific and educational institutions and for ceremonial purposes.

(11) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

- (a) Meat that is cut and wrapped commercially or privately;
- (b) Meat that has been boned out;
- (c) Quarters or other portions of meat with no part of the spinal column or head attached;
- (d) Hides and/or capes with no head attached;
- (e) Skull plates with antlers attached that have been cleaned of all meat and brain tissue;
- (f) Antlers with no tissue attached;
- (g) Upper canine teeth (buglers, whistlers, ivories);
- (h) Finished taxidermy heads.

(12) For the purposes of the parts and carcass import ban in subsection (11), the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Kansas, Michigan, Minnesota, Montana, Nebraska, New Mexico, New York, Oklahoma, South Dakota, Wisconsin, Wyoming, Utah, West Virginia, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(13) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(14) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection (11) shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection (11) shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. & cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. & cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 111-2005(Temp), f. & cert. ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. & cert. ef. 1-1-06; DFW 135-2008, f. & cert. ef. 10-17-08; DFW 2-2009, f. & cert. ef. 1-9-09

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**Rule Caption:** Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.

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

**Filed with Sec. of State:** 1-13-2009

**Certified to be Effective:** 1-13-09

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 635-006-0232

**Subject:** Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

### 635-006-0232

#### Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2009 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

#### (a) FISH:

- (A) Anchovy, Northern \$0.10.
- (B) Cabezon, \$3.42.
- (C) Carp \$0.50 (2006 price).
- (D) Cod, Pacific \$0.54.
- (E) Flounder, arrowtooth \$0.10.
- (F) Flounder, starry \$0.38.
- (G) Greenling, \$4.77.
- (H) Grenadier \$0.11.
- (I) Hagfish \$0.62.
- (J) Hake, Pacific (Whiting) \$0.11.
- (K) Halibut, Pacific, dressed weight with head on \$4.30.
- (L) Herring, Pacific \$0.05.
- (M) Lingcod, \$2.32.
- (N) Mackerel, jack \$0.01, Pacific \$0.12.
- (O) Opah \$2.98.
- (P) Pacific ocean perch, \$0.48.
- (Q) Pollock, Walleye \$0.67 (2001 price).
- (R) Rockfish:
  - (i) Black, \$1.96.
  - (ii) Blue, \$1.88.
  - (iii) Canary, \$0.49.
  - (iv) Darkblotched, \$0.48.
  - (v) Black and yellow, \$6.46.
  - (vi) Brown, \$2.73.
  - (vii) China, \$6.74.
  - (viii) Copper, \$3.64.
  - (ix) Gopher, \$4.68.
  - (x) Grass, \$6.94.



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(xi) Quillback, \$4.33.  
(xii) Shelf, \$2.57.  
(xiii) Shortbelly, using trawl gear \$0.29 (2003 price), using line and pot gear \$1.96.  
(xiv) Slope, using trawl gear, \$0.49 using line and pot gear \$0.51.  
(xv) Tiger, \$4.26.  
(xvi) Vermilion, \$2.72.  
(xvii) Widow \$0.45.  
(xviii) Yelloweye, using trawl gear \$0.51, using line and pot gear \$0.99.  
(xix) Yellowtail, using trawl gear \$0.50 (2006 Price), using line and pot gear \$5.00.  
(S) Sablefish:  
(i) Dressed weight, ungraded \$4.16, extra small \$3.15, small \$4.13, medium \$4.76 and large \$4.96.  
(ii) Round weight, ungraded \$2.03, extra small \$1.30, small \$1.74, medium \$2.14 and large \$2.56.  
(T) Salmon, Chinook, Ocean dressed weight: large \$7.25, medium \$7.49, small \$6.94 and mixed size \$7.21.  
(U) Salmon, coho, Ocean dressed weight: mixed size \$1.90.  
(V) Salmon, pink, ocean dressed weight, ungraded, \$1.03 (2007 price).  
(W) Sanddab, Pacific \$0.42.  
(X) Sardine, Pacific \$0.11.  
(Y) Shad, American:  
(i) Coast, ungraded, gill net and set net, \$0.30 (2003 price).  
(ii) Columbia, ungraded \$0.20.  
(Z) Shark, blue \$0.50, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.40, sixgill, \$0.05 (2007 price), soupfin \$0.81, spiny dogfish \$0.36, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), threshold dressed weight \$1.50 (1995 price) and round weight \$0.34 and other species \$1.00 (2007 price).  
(AA) Skates and Rays \$0.28.  
(BB) Smelt, Eulachon (Columbia River), \$3.72 and other species \$2.00 (2004 price).  
(CC) Sole, butter \$0.36, curlfin (turbot) \$0.31, Dover \$0.38, English \$0.32, flathead \$0.30, petrale \$1.00, rex \$0.35, rock \$0.36 and sand \$0.79.  
(DD) Steelhead \$0.62.  
(EE) Sturgeon, green \$1.01 and white \$2.13.  
(FF) Surfperch \$1.00 (2006 price).  
(GG) Swordfish \$4.00.  
(HH) Thornyhead (Sebastolobus), longspine \$0.47 and shortspine \$0.67.  
(II) Tuna, albacore \$1.20, bluefin \$2.50 (2004 price), bigeye \$4.00, and yellowfin \$3.49 (2006 price).  
(JJ) Wahoo \$3.00.  
(KK) Walleye \$2.51.  
(LL) Wolf-eel \$1.59.  
(MM) Wrymouth \$0.25.  
(b) CRUSTACEANS:  
(A) Crab: box \$2.00(2007 price), Dungeness bay \$3.26 and ocean \$2.09, rock \$1.44 and Tanner \$0.69 (2003 price).  
(B) Crayfish \$2.09.  
(C) Shrimp: brine \$1.00, coonstripe \$1.57 (2007 price), ghost (sand) \$2.54, mud \$1.21, pink \$0.55 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$9.21.  
(D) Water flea (Daphnia) \$0.65 (2002 price).  
(c) MOLLUSKS:  
(A) Abalone, flat \$21.09.  
(B) Clams: butter \$0.43, cockle \$0.54, gaper \$0.49, Manila littleneck \$2.00 Nat. littleneck \$2.00, razor \$2.41 and softshell \$0.99.  
(C) Mussels, ocean \$0.85.  
(D) Octopus \$1.13.  
(E) Scallop, rock \$0.70 (2005 price).  
(F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).  
(G) Squid, market \$0.25 (2007 price).  
(H) Squid, other species \$0.06.  
(d) OTHER INVERTEBRATES:  
(A) Jellyfish \$10.00 (2004 price).  
(B) Sea cucumber \$0.30 (2005 price).  
(C) Sea urchin, red \$0.38 and purple \$0.30 (2004 price).  
(D) Sea stars \$1.00 (2006 price).  
(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully

taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09

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**Rule Caption:** Amend rules relating to License Exchanges and Refunds.

**Adm. Order No.:** DFW 4-2009(Temp)

**Filed with Sec. of State:** 1-13-2009

**Certified to be Effective:** 1-14-09 thru 7-12-09

**Notice Publication Date:**

**Rules Amended:** 635-001-0050

**Subject:** Amend rules to allow licensees to exchange a license purchased for a combination hunting and fishing license, sports pac, senior license, Pioneer license or a disabled veteran's license, when qualified.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-001-0050

### License Refunds

Consistent with the authority to make refunds prescribed in ORS 293.445(2):

(1) License and tag refunds will be granted upon request only to a person furnishing satisfactory evidence to the Department that:

(a) More licenses or tags than necessary have been acquired;

(b) A higher fee than set by statute was paid for; or

(c) A license agency made an error.

(d) Death of a tag holder occurs before the opening of the season for which the tag was issued; only the tag fee shall be refunded. For the purpose of this rule the person in possession of the deceased's tag shall be presumed to be entitled to the refund.

(2) Where seasons have closed that affect a large number of license buyers and where other similar opportunities are not available, the Director may authorize a license refund for monies received by the state, which, in equity and good conscience, it is not entitled to.

(3) For the purpose of this rule in sections (4) and (5) of this rule, application fee is defined as that portion of the money paid for an application card representing the cost to administer the controlled hunt program; tag fee is defined as that portion of the money paid for an application card representing the value of a particular tag prior to the drawing.

(4) Application fee and tag fee refunds will be granted upon written request only to a person issued an application card in error by a license agency. The request must be accompanied by the license agency's written acknowledgement of error.

(5) License exchanges

(a) A license may be exchanged for a combination hunting and fishing license, a senior combination license or a Sports Pac. Where the new license costs more than the license currently in possession, the exchange requires payment to the Department of the difference.

(b) The Department will refund (in full or in part) the license fee to a customer who has purchased a full price license if the Department determines that at the time of purchase, the licensee was qualified for one of the following free or reduced-price licenses:

(A) Senior license;

(B) Pioneer license; or

(C) Disabled Veterans license.

(c) License refunds will be mailed to the licensee after a replacement license has been issued.

(d) Exchanges and refunds must be done through the Department's Salem Headquarters, either in person or by mail order.

(A) To request an exchange or refund under this rule, a person must provide the Department with the original license being returned, along with any controlled hunt applications, tags and permits issued under that license;

(B) All mail order requests for exchanges or refunds must also include:

(i) A completed license application;

(ii) A letter requesting a refund or exchange (specifying the type of license being requested); and

(iii) Any net payment due, plus shipping and handling charges for mail order requests.

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- (e) Agent fees are non refundable.
  - (f) Refunds will be mailed to the customer within six to eight weeks.
- Stat. Auth.: ORS 293.445  
Stats. Implemented: ORS 293.445  
Hist.: FWC 79-1985, f. & ef. 12-11-85; FWC 25-1987, f. & ef. 6-11-87; FWC 81-1994, f. & cert. ef. 10-26-94; DFW 4-2009(Temp), f. 1-13-09, cert. ef. 1-14-09 thru 7-12-09

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**Rule Caption:** Amended rules to allow angling from personal float tubes on specified St. Louis Ponds.

**Adm. Order No.:** DFW 5-2009

**Filed with Sec. of State:** 1-15-2009

**Certified to be Effective:** 1-15-09

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 635-008-0145

**Subject:** Amended rules related to the use of floating devices in ponds to reflect the angling regulation change made as part of the 2009 Oregon Sport Fishing Regulations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

### 635-008-0145

#### St. Louis Ponds: Marion County

(1) St. Louis Ponds is that area posted Department lands located in Sections 21, 22, 27, and 28, Township 5 South, Range 2 West of the Willamette Meridian in Marion County and containing 222 acres more or less.

(2) In the area described in section (1) of this rule it is unlawful to:

(a) Use the area for any purpose between one hour after sunset and one hour before sunrise;

(b) Use any floating craft on any pond except as provided under (3) below;

(c) Swim or otherwise enter any pond;

(d) Build open fires;

(e) Discharge rifles and pistols;

(f) Discharge shotguns except during open seasons between the beginning of pheasant season and the end of waterfowl season, or during dog trials authorized by Department permit;

(g) Operate motor vehicles off established roads;

(h) Run dogs except in posted areas;

(i) Violate the terms of any permit issued by the Department.

(3) Angling from a floating craft prohibited on Pond #1 and Pond #3.

Angling from a float tube is allowed on all other ponds. Float tubes are defined as a manufactured device constructed of canvas, nylon or other similar material encasing an inner tube capable of supporting one person sitting inside with their legs dangling below the vessel, used as a means of transportation and angling on water.

Stat. Auth.: ORS 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.138, 496.146 & 496.162

Hist.: FWC 21-1980, f. & ef. 4-25-80, Renumbered from 635-008-0012; FWC 14-1983, f. & ef. 4-4-83; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; DFW 5-2009, f. & cert. ef. 1-15-08

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### Department of Forestry

#### Chapter 629

**Rule Caption:** Amends existing and creates new Forest Resource Trust programs for private and local government landowners.

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

**Filed with Sec. of State:** 1-12-2009

**Certified to be Effective:** 2-1-09

**Notice Publication Date:** 8-1-2008

**Rules Adopted:** 629-022-0035, 629-022-0050, 629-022-0060, 629-022-0070, 629-022-0080, 629-022-0800, 629-022-0810, 629-022-0820, 629-022-0830, 629-022-0840, 629-022-0850

**Rules Amended:** 629-022-0030, 629-022-0040, 629-022-0110, 629-022-0120, 629-022-0130, 629-022-0140, 629-022-0150, 629-022-0160, 629-022-0200, 629-022-0210, 629-022-0220, 629-022-0230, 629-022-0250, 629-022-0300, 629-022-0320, 629-022-0380, 629-022-0390, 629-022-0400, 629-022-0410

**Rules Repealed:** 629-022-0100, 629-022-0500, 629-022-0600, 629-022-0700

**Subject:** In 2007, the Oregon State Legislature passed new and revised statutory provisions for the Forest Resource Trust. The legislation created a Cost-Share Program for non-industrial private forest landowners and generalized the existing Stand Establishment Program as a Loan Program, with the option of extending eligibility for

the Loan Program to qualified private and local government landowners. The rulemaking creates new rules for the Forest Resource Trust Cost-Share Program and amends existing rules to generalize the current Stand Establishment Program as a Loan Program that, in addition to funding stand establishment projects on underproducing lands, provides financial assistance for other projects that lead to the improved management of forestlands. The rulemaking allows other qualified private and local government landowners to be eligible to participate in the Loan Program and sets as a high priority the funding of projects or practices that are consistent with conservation plans and strategies of the Oregon Department of Fish and Wildlife. In addition to meeting a statutory requirement to adopt rules, the rulemaking adopts other rule changes as recommended by the Forest Resource Trust Advisory Committee, provisions that:

(i) Allow the State Forester to grant exceptions to the Forest Resource Trust administrative rules;

(ii) Allow Forest Resource Trust programs to fund environmental restoration practices; and

(iii) Incorporate other definitions, amendments and rule organization changes.

The Department opened a period for written public comment on the proposed rules from July 11, 2008 through September 5, 2008. On August 26, 2008, the Department held a public hearing on the proposed rules. No one attended the public hearing. The Department received one written and one verbal comment concerning OAR 629-022-0110. Agency staff recommended revisions to OAR 629-022-0110 to address these comments.

**Rules Coordinator:** Gayle Birch—(503) 945-7210

### 629-022-0030

#### Purpose and Trust Responsibilities

(1) Forest Resource Trust programs provide financial, technical and related assistance to nonindustrial private and other qualified private and local government Forestland owners to establish Forest Stands and improve management of Forestlands for Timber production, fish and wildlife, water quality and other environmental purposes.

(2) The Board of Forestry is responsible for the management of the Forest Resource Trust program. The State Forester is responsible for implementing the Trust program and policies adopted by the Board of Forestry.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

### 629-022-0035

#### Applicability

(1) Provisions in OAR 629-022-0030 through 629-022-0120 apply to both the loan and cost share programs of the Forest Resource Trust.

(2) Provisions in OAR 629-022-00130 through 629-022-0410 apply only to the loan program of the Forest Resource Trust.

(3) Provisions in OAR 629-022-0800 through 629-022-0850 apply only to the cost share program of the Forest Resource Trust.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

### 629-022-0040

#### Definitions

Defined words and terms are identified with upper case letters throughout these rules. As used in the Forest Resource Trust rules and contracts and agreements entered into under the Forest Resource Trust rules, unless the context requires otherwise:

(1) "Actual Trust Cost" means the portion of Incurred Costs paid by the Trust.

(2) "Adequately Stocked" means the number and size of the trees growing within a Forest Stand meets the standards determined by the State Forester in OAR 629-022-0390.

(3) "Approved Consulting Services" means services and supplies to be provided by a Resource Management Professional approved by the State Forester as specified in a Forest Resource Trust loan program contract or cost-share agreement.

(4) "Approved Practices" means the schedule and manner of forest Practices, Environmental Restoration and related materials and supplies approved by the State Forester.

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(5) "Budgeted Cost" means the expected cost of an Approved Practice or an Approved Consulting Service.

(6) "Carbon Offsets" means credits registered or used, transferred or sold to comply with air quality or other greenhouse gas mitigation measures for the purpose of compensating for emissions of carbon dioxide from other sources such as the burning of fossil fuels for energy production. Carbon Offsets are not considered to be a Forest Product as defined in OAR 629-22-040(15).

(7) A "Catastrophe" means an event or circumstance beyond the Landowner's control, resulting in all or part of a Forest Stand being incapable of producing harvest revenues to make repayment of Trust funds as described in OAR 629-022- 0300.

(8) "Consulting Services" means services and supplies to be provided by a Resource Management Professional necessary to conduct a Practice or Environmental Restoration.

(9) "Conversion" means an Operation conducted on Underproducing Forestland with the objective of removing undesirable competing vegetation, including the incidental harvest of Forest Products and establishing an Adequately Stocked, Free to Grow Forest Stand.

(10) "Direct Cost Payment" means the disbursement of Forest Resource Trust funds on behalf of the Landowner for up to 100 percent of the Incurred Cost of an Approved Practice or Approved Consulting Service as specified in a Loan Program Contract.

(11) "Ecosystem Services" means environmental benefits arising from the conservation and management of forestland, including, but not limited to, fish and wildlife habitat, clean water and air, pollination, mitigation of environmental hazards, control of pests and diseases, carbon sequestration, avoidance of carbon dioxide emissions and maintenance of soil productivity.

(12) "Environmental Restoration" means a practice that protects, restores or improves natural resources. For example, an Environmental Restoration practice may enhance wildlife habitat for a sensitive species such as the osprey or a threatened species such as the bald eagle; improve water quality, reduce water temperature, or provide large woody debris to a stream in a watershed enhancement area; improve the health of an insect damaged or diseased forest; or protect soils from erosion or degradation.

(13) "Final Harvest" means forest products are removed from the stand to create a Harvest Type 1, or 3 condition, described as:

(a) "Harvest Type 1" means an Operation that requires reforestation but does not require wildlife leave trees. A Harvest Type 1 is an Operation that leaves a combined stocking level of Free To Grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(b) "Harvest Type 3" means an Operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of Operations is limited under ORS 527.740 and 527.750.

(14) "Forestland" means land zoned in a county comprehensive plan for forest or farm use that is capable of producing commercial hardwood or softwood Timber, regardless of the vegetation currently on the land.

(15) "Forest Products" include, but are not limited to, logs, poles and pilings, lumber, chips, and pulp.

(16) "Forest Stand" means the aggregation of all trees within the project boundary.

(17) "Free To Grow" means the State Forester has determined that a Forest Stand has well distributed trees, of acceptable species and of good form and has a high probability of remaining or becoming vigorous, healthy and dominant over undesired competing vegetation.

(18) "Harvest" means the Forest Products in a Forest Stand are cut, severed, removed or sold.

(19) "Incurred Costs" means the actual invoiced amount from a Provider of Services or a Provider of Supplies for completing an Approved Practice or Approved Consulting Service; or the Budgeted Cost for the Approved Practice or Approved Consulting Service; whichever is lower.

(20) "Landowner" means the Person or Persons who are eligible to apply for or receive financial and technical assistance through Forest Resource Trust programs.

(21) "Loan Program Contract" means the Forest Resource Trust contract that is signed by the State Forester and the Landowner as the means to receive financial and technical assistance under the Forest Resource Trust's loan program.

(22) "Low Site Forestland" means Forestland that is capable of annual wood production between 20 and 119 cubic feet per acre per year at culmination of mean annual increment (Cubic Foot Site Class IV, V and VI).

(23) "No Salvage Value" means Forest Products remaining within portions of the Forest Stand affected by a Catastrophe that have no economic value or insufficient economic value such that any Salvage Operation resulting in the Harvest Type 1 or Harvest Type 3 Operation would meet the provisions of OAR 629-610-0070.

(24) "Nonindustrial Private Forestland Owner" means:

(a) Any forest Landowner who has not owned a forest product manufacturing facility within the past 6 months that employed more than 6 people; and

(b) Is not owned or partially owned, or controlled, by any Person who has owned a forest products manufacturing facility within the past 6 months that employed more than 6 people.

(25) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(26) "Person" means an individual, partnership, corporation, Limited Liability Company, trustee, business or other entity.

(27) "Practice" means an operational forest activity identified in the project plan that results in stand establishment or the improved management of Forestland.

(28) "Project" means the Practices, Environmental Restoration and consulting services required to establish a Forest Stand or improve the management of Forestland.

(29) "Provider of Services" means an individual, business, or other entity that has the knowledge, skills, equipment, and ability to plan, conduct or supervise Approved Practices or Approved Consulting Services.

(30) "Provider of Supplies" means an individual, business, or other entity that provides supplies used to implement Approved Practices or Approved Consulting Services.

(31) "Qualified Private or Local Government Forestland Owner" means any Landowner that holds fee title to Forestland except state or federal government agencies.

(32) "Resource Management Professional" means a Person who the State Forester recognizes as having the ability to develop Landowner plans for managing the biological, economic, and environmental relationships of forest resources, and to identify appropriate activities to manage, protect, or enhance forest resources, and who has:

(a) A degree in forestry, biology or related sciences, plus at least a year of forestry consulting or employment experience; or

(b) An associate degree in forestry, biology or related sciences, plus at least 5 years of forestry consulting or employment experience.

(33) "Salvage" means Harvest of trees that are dead, dying or damaged and deteriorating.

(34) "State Forester" means the State Forester as defined in ORS 526.031 or any duly authorized representative or any successor thereto.

(35) "Timber" means all logs which can be measured in board feet and other Forest Products.

(36) "Trust" means the Forest Resource Trust as authorized in ORS 526.700 through 526.775.

(37) "Unapproved Costs" means Incurred Costs related to Practices or consulting services that were:

(a) Not approved or budgeted for payment by the Trust; or

(b) Approved Practices or consulting services that were not completed to the satisfaction of the State Forester.

(38) "Underproducing Forestland" means any Forestland that is capable of producing at least 20 cubic feet of wood fiber per acre per year at culmination of mean annual increment, but does not currently support the minimum number of Free To Grow trees required in the reforestation rules under the Forest Practices Act.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

### 629-022-0050

#### Project Criteria

The State Forester must use the following criteria to evaluate and approve proposed Projects:

(1) The highest priority Projects are those favoring:

(a) Landowners with existing Loan Program Contracts or cost-share Practice plans in good standing that request additional funds to ensure that their Forest Stands reach Free To Grow, remain Adequately Stocked or otherwise remain in an improved forest management condition;

(b) Lands with a written forest management plan that encompasses the eligible land and has been created or updated within the last 5 years;



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(c) Environmental Restoration or other Approved Practices consistent with conservation plans or strategies adopted by the Oregon Department of Fish and Wildlife;

(d) Landowners who contribute funds, labor, equipment and material; and

(e) Lands covered by a Stewardship Agreement as defined in ORS 541.423.

(2) Projects of medium priority are those including:

(a) Lands that are of higher site productivity based on the region in which they occur;

(b) Larger acreages;

(c) Funding sources that are approved from other forestry incentive or loan programs;

(d) Forest Products that are harvested during the Conversion.

(3) The lowest priority Projects are those that meet the requirements of OAR 629-022-0110 but do not contain any of the priority considerations in subsection (1) and (2).

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745

Stats. Implemented: ORS 526.695 - ORS 526.775

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0060

### Donations to the Trust Fund

(1) Any individual, partnership, corporation, organization or government agency may contribute funds to the Trust fund.

(2) At the request of the donor, contributed funds may be targeted by the State Forester for either the loan or cost-share program and for specific Practices or Environmental Restoration in specific watersheds, counties or regions of Oregon.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745

Stats. Implemented: ORS 526.695 - ORS 526.775

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0070

### Carbon Offsets

In consideration of the benefits received through Forest Resource Trust programs, the State Forester may establish an interest in the rights to Carbon Offsets accruing to the Forest Stand through Loan Program Contracts or other instruments established in ORS 526.780, provided such action by the State Forester does not interfere with or affect the Harvest and sale of Forest Products by the Landowner.

Stat. Auth.: ORS 526.700 - ORS 526.730, ORS 526.745

Stats. Implemented: ORS 526.695 - ORS 526.775

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0080

### State Forester Exceptions to these Rules

The State Forester may issue an exception to these rules so as to approve Projects that:

(1) Assist a Landowner in meeting reforestation obligations under OAR 629-610-0070 where such approval will lead to the establishment of a Forest Stand that the Landowner agrees to manage above the reforestation stocking standards in the Forest Practices Act and in 629-610-020 or as otherwise specified in the Loan Program Contract, until the conditions in 629-022-0250, Life of the Contract, are met.

(2) Contain an Environmental Restoration that results in a non-forest native vegetation habitat condition (e.g., oak savanna) important to and consistent with conservation plans or strategies adopted by the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 526.700 to ORS 526.730, ORS 526.745

Stats. Implemented: ORS 526.695 - ORS 526.775

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0110

### Eligible Landowners and Land

(1) Only Nonindustrial Private Forestland owners with less than 5,000 acres of Forestland or up to 15,000 acres of Low Site Forestland in Oregon are eligible to receive funds under the cost-share program.

(2) Nonindustrial private and other qualified private and local government Forestland owners are eligible to receive funds under the loan program.

(3) Eligible Forestland must be Underproducing Forestland or other Forestland that is:

(a) At least 10 contiguous acres in size;

(b) Identified in the county comprehensive plan as forest, farm or conservation use;

(c) Located outside urban growth boundaries or residential zones, as identified in the county comprehensive plan;

(d) Free from all obligations under the Forest Practices Act;

(e) Free of any "no tree cutting" or "no timber harvest" covenants or encumbrances;

(f) Under no current petition before a county requesting a land use change to avoid reforestation under ORS 527.760; and

(g) Currently under no application for a claim for, or has received, economic compensation for or waiver from Forestland zoning restrictions or requirements of the Oregon Forest Practices Act.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0120

### Applying for Trust Funds

(1) Any Person may apply for Trust funds, certifying on an application provided by the State Forester that:

(a) Both the lands and the Person meet the requirements of OAR 629-022-0110; and

(b) The Person requests a suspension of the reforestation requirements under OAR 629-610-0070 when a proposed Project includes the Harvest of Forest Products.

(2) If the Person is a corporation, partnership or limited liability company, the applicant must provide the names and addresses of the stockholders, partners, members or any other Person having an ownership interest in the entity.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0130

### Project Plan

(1) A Landowner meeting the requirements of 629-022-0110 and 629-022-0120 must submit a Project plan.

(2) A Landowner may receive technical assistance to develop the Project plan from the State Forester, other cooperating state or federal agencies, or a Resource Management Professional.

(3) The Project plan must include:

(a) Practices and Approved Consulting Services necessary to accomplish stand establishment on eligible Underproducing Forestlands or the improved management of eligible Forestland;

(b) A Project map or maps delineating the Project boundary on an aerial photo and also showing a legend, scale, north arrow, property boundary, topography, location of Practices, acres, and where applicable to the Approved Practices in the Project plan, vegetative cover types, soil types within the Project boundary, existing or proposed roads, and sensitive resource sites or streams that are protected by the Forest Practices Act; and

(c) A description of Environmental Restoration planned within the Project boundary and the source of funding for the Practices.

(4) The Project plan must also include for each Practice described in the Project plan :

(a) Specifications for the Practice;

(b) A time schedule for completion;

(c) Budgeted Costs; and

(d) A description of any Forest Practices Act rules that need to be followed.

(5) When the Landowner retains a Resource Management Professional to implement a Project, the Project plan must include the Resource Management Professional fees described in OAR 629-022-0230.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0140

### Approval of a Proposed Project

(1) The State Forester must use the information in the Landowner's Project plan, described in OAR 629-022-0130, in a point rating system based on the Project criteria in 629-022-0050, to select Projects for funding, subject to the requirements of 629-022-0150.

(2) When a Project is selected for funding, the State Forester must approve all Practices, Environmental Restoration, consulting services and Budgeted Costs described in the Project plan in OAR 629-022-0130(3), (4) and (5). Budgeted Costs and fees are subject to the limitations in 629-022-0220 and 629-022-0230.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

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## 629-022-0150

### The Trust Contract

(1) A Landowner receiving Project approval for Trust funding under the loan program must execute a Loan Program Contract with the State Forester.

(2) The Loan Program Contract must include:

(a) An approved Project plan;

(b) Financial agreements for repayment of Trust funds under OAR 629-022-0300 through 629-022-0410; and

(c) A security instrument, if required by the State Forester, described in OAR 629-022-0160.

(3) No work may begin on the Practices described in the Project plan that are subject to Direct Cost Payments by the Trust until the contract is signed by all parties.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0160

### Trust Security Instrument

(1) The Landowner may be required by the State Forester to provide good and sufficient collateral to secure repayment of all funds paid to the Landowner from the Trust.

(2) Collateral must be in the form of a general lien upon all Forest Products grown or growing within the Project boundary or boundaries and proceeds derived therefrom as specified in ORS 526.740.

(3) Costs and fees related to the collateral and the security instrument, such as title policy premiums and escrow fees, must be paid from Trust funds but may not be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320. These costs and fees are subject to repayment following a breach of contract.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0200

### Implementing the Project Plan; Payments

(1) The Landowner must implement the Practices in the Project plan and notify the State Forester when an Approved Practice or an Approved Consulting Service, or a part of a Practice or service, described in the Project plan is complete.

(2) To request a Direct Cost Payment, the Landowner must submit written invoices for the Incurred Cost of the completed Practice or consulting service notified in section (1) of this rule.

(3) The State Forester must disburse Trust funds to the land owner as Direct Cost Payments when the State Forester certifies that a Practice is complete to the specifications and within the Budgeted C approved in the Project plan in OAR 629-022-0140.

(4) Actual Trust costs must be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0210

### Landowner Obligations

(1) The Landowner must:

(a) Complete all Project Practices described in the Project plan;

(b) Manage the Forest Stand in an Adequately Stocked and Free To Grow condition, as defined in OAR 629-022-0390;

(c) Comply with forest Practices standards required by state and federal law except for planting standards, which may be more than the required state minimums;

(d) Report any adverse changes in the condition of the Forest Stand to the State Forester; and

(e) Notify the State Forester before commencing any forest Operations.

(2) The State Forester may periodically perform compliance inspections on all Practices described in the Project plan. The State Forester must have access to all lands described in the Project plan to monitor, evaluate or certify as complete the Practices described in the Project plan.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0220

### Project Rates and Costs

(1) Costs for Approved Practices or Approved Consulting Services described in the Loan Program Contract must be within Budgeted Costs determined by the State Forester, based on the prevailing rates and wages in Oregon.

(2) Project costs paid from the Trust fund may not exceed the Project costs approved in OAR 629-022-0140(2), unless the Landowner requests additional Trust funds, and provides evidence justifying additional Trust funds, prior to the completion of the Practice.

(3) The State Forester may approve additional Trust funds when:

(a) The requirements of section (2) of this rule are met; and

(b) The Landowner agrees to amend the contract and the payback amounts, described in OAR 629-022-0300 through 629-022-0320 to reflect the higher Trust fund expenditures.

(4) The Trust fund may not pay for:

(a) Purchase of capital or expendable items, such as vehicles, ongoing road maintenance, sprayers, shovels, planting hoes, saws or safety equipment; or

(b) Landowner labor, materials or equipment.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0230

### Resource Management Professional Fees

(1) Resource Management Professional fees for Approved Consulting Services may be paid from Trust funds for field and office work required to write a Project plan described in OAR 629-022-0130 and to supervise the implementation and completion of all Practices in the Project plan described in 629-022-0130.

(2) The fees in section (1) of this rule must be subject to:

(a) The Landowner executing the contract under OAR 629-022-0150 and 629-022-0160; and

(b) The Landowner submitting invoices for the professional fees charged for the Approved Consulting Services under OAR 629-022-0200.

(3) All Resource Management Professional fees paid from the Trust fund must be included in the Actual Trust Costs to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0250

### Life of the Contract

The Loan Program Contract between the Landowner and the Trust must be terminated when:

(1) The Landowner makes full payment described in OAR 629-022-0300; or

(2) A Catastrophe destroys the entire Forest Stand, leaving No Salvage Value; or

(3) Two hundred years, or as otherwise specified in the contract, elapse since the execution of the original contract.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0300

### Repaying Trust Funds

(1) The Landowner may terminate the Loan Program Contract at any time during the life of the contract by repaying all Trust funds, including interest.

(2) The State Forester must calculate the amount due by using the Actual Trust Costs paid to the Landowner to establish the Forest Stand described in the Loan Program Contract, with annual interest at the rate determined in OAR 629-022-0320. Interest is simple, prorated to the nearest full month, and begins on the date that payment or payments are made to the Landowner.

(3) When there is a partial Harvest of Forest Products at any time during the life of the Loan Program Contract, the Landowner must make payments of 50 percent of all net receipts, until all the Trust funds, including interest are paid.

(4) When there is a Final Harvest of Forest Products from the Forest Stand, the Landowner must make full repayment of the lowest of the following:

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- (a) The Actual Trust Cost plus interest attributable to that portion of the Forest Stand so harvested; or
- (b) The remaining amount of the Actual Trust Cost plus interest; or
- (c) The total of all net receipts.

(5) Repayment of Trust funds is first applied to the Actual Trust Cost paid to the Landowner and then to the accumulative interest, until repaying all the Trust funds, including interest.

(6) The Landowner must make payments to the State Forester, to be deposited in the Trust fund, within 60 days of completing the Harvest Operation triggering the need for payment.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0320

### Interest Rate

(1) The rate is 4.0 percent, simple interest.

(2) The interest rate must be fixed when the Loan Program Contract is executed and may not change during the life of the contract.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 4-2006(Temp), f. & cert. ef. 5-2-06 thru 10-28-06; Administrative correction, 11-16-06; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0380

### Catastrophe; Salvage Adjustments

(1) A Catastrophe may be caused by:

(a) Insects, diseases, fire or other casualties and accidents; or

(b) Storms, floods, droughts and other unusual environmental conditions.

(2) When a Catastrophe damages individual trees or groups of trees within the Forest Stand:

(a) The Landowner must pay the appropriate amount on Salvaged Forest Products, as described in OAR 629-022-0300(3); and

(b) The State Forester must adjust the Forest Stand boundaries to reflect the Forest Stand capable of producing Harvest revenues. The Forest Stand boundaries may not be adjusted to exclude land with unharvested merchantable Forest Products.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0390

### Adequately Stocked Forest Stand

The Landowner must manage Forest Stands established with Trust funds at or above the reforestation stocking standards in the Forest Practices Act and in OAR 629-610-020 or as otherwise specified in the contract, until the conditions in 629-022-0250, Life of the Contract, are met.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0400

### Landowner Breach of Loan Program Contract

A Loan Program Contract breach occurs when the Landowner fails to perform any term of the contract.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0410

### Remedies for Breach of Contract

Remedies for Breach of Loan Program Contract

(1) The Landowner must pay liquidated damages for a breach of contract by repaying all Trust funds, with interest as calculated in OAR 629-022-0300(2).

(2) At any time Forest Products are harvested in breach of contract, the Landowner must pay liquidated damages in the form of a breach penalty.

(3) In addition to any other right as provided by law, the State Forester may assign a liquidated and delinquent account, as defined by the Oregon Accounting Manual, to the Department of Revenue or to a private collection agency.

(4) The breach penalty in section (2) of this rule may include a reasonable administrative fee to recover the cost of collection services and other related costs, as described in ORS 293.231 through 293.250.

Stat. Auth.: ORS 526.700 - 526.730 & 526.745

Stats. Implemented: ORS 526.695 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07; DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0800

### Scope

(1) Nonindustrial Private Forest Landowners meeting the requirements of OAR 629-022-0110 may apply pursuant to 629-022-0120 for financial assistance under the cost-share program for the purpose of planning for or carrying out Practices, Consulting Services or Environmental Restoration that result in the establishment of Forest Stands or in the improved management of Forestlands for timber production, fish and wildlife, water quality and other environmental purposes.

(2) The State Forester must maintain, and revise as necessary, a list of cost-share components that exemplify the Practices, Consulting Services and Environmental Restoration that are eligible for financial assistance under the cost-share program.

(3) Depending on the agreements entered for funds received by the Forest Resource Trust pursuant to ORS 526.725, the State Forester may place limits on the scope of cost-share components available for financial assistance under the cost-share program or place additional years on the requirement to maintain the effectiveness of the cost-share Practice as specified in OAR 629-022-0820(8) and 629-022-0840(2).

(4) Landowners cannot apply for financial assistance under the cost-share program for Practices, Consulting Services or Environmental Restoration that have already been completed, or are in the process of being completed, at the time of application. Further, Landowners may not begin completing any Practices, Consulting Services or Environmental Restoration being applied for until the State Forester has approved or denied the Landowner's application under OAR 629-022-0810.

(5) Practices, Consulting Services or Environmental Restoration that are likely to result in Ecosystem Services that have a reasonable chance of securing a net economic benefit from payments for these services within the maintenance period for the effectiveness of the Practice as defined in OAR 629-022-0820(8) are not eligible for cost-share reimbursement payments.

Stat. Auth.: ORS 526.700 - 526.730

Stats. Implemented: ORS 526.703

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09

## 629-022-0810

### Approval

(1) Landowner applications for financial assistance under the cost-share program may not be approved until the State Forester has determined that cost-share program funds are available.

(2) The State Forester must evaluate the information in the Landowner's cost-share application to determine a project's priority for funding based on the Project criteria in OAR 629-022-0050 subject to any limitations set forth under 629-022-0810(3).

(3) The State Forester must maintain, and periodically update, a list of cost-share rates by cost-share component that exemplify the not-to-exceed cost-share reimbursement limits available to Landowners applying for financial assistance under the cost-share program.

(4) The State Forester must maintain, and periodically update, a list of Landowner self-labor and self-equipment use rates that exemplify the not-to-exceed cost-share reimbursement limits available to Landowners applying for financial assistance under the cost-share program.

(5) State Forester approval of the Landowner's cost-share application constitutes an agreement between the Forest Resource Trust and the Landowner that obligates the Forest Resource Trust cost-share program funds necessary to cover the sum of the not-to-exceed cost-share reimbursement limit for each cost-share component applied for and approved.

(6) For applications that are not approved, the State Forester must notify Landowner's of such. The State Forester must specify the reason for denying the Landowner's application including, but not limited to, a lack of available funds, low ranking of the application with respect to the Project criteria in OAR 629-022-0050, or incompleteness of the application.

Stat. Auth.: ORS 526.700 - 526.730

Stats. Implemented: ORS 526.703

Hist.: DOF 1-2009, f. 1-12-09, cert. ef. 2-1-09



# ADMINISTRATIVE RULES

629-022-0820

## Practice Plan and Other Landowner Obligations

(1) Upon approval of the Landowner's cost-share application, the State Forester must prepare a Practice plan that provides the performance specifications and time period for completing each cost-share component approved in the Landowner's application.

(2) The Practice plan will list all the approved cost-share components and the corresponding cost-share not-to-exceed reimbursement rates for the approved application.

(3) The Practice plan is the basis by which the State Forester will determine acceptable performance by the Landowner for completing the cost-share component approved in the Landowner's application.

(4) Landowners agree to complete all the cost-share components listed in the Practice plan.

(5) Landowners can request modifications to the Practice plan based on new information not available at the time of application or a change in site conditions since the time of application.

(6) The State Forester is not obligated to approve the Landowner's requested modification to the Practice plan if the State Forester determines:

(a) The new information or the change in site conditions does not require a change to the Practice plan; or

(b) Funds to pay for the Practice plan modifications are not available.

(7) Landowners are responsible for obtaining the authorities, rights, easements, or other approvals necessary to implement the approved cost-share components of the Practice plan in accordance with all applicable laws and regulations including compliance with the Oregon Forest Practices Act.

(8) Upon receipt of a cost-share reimbursement payment, the Landowner agrees to maintain the effect of the implemented Practices or Environmental Restoration on the Forestland for at least 10 years from the year the cost-share reimbursement payment was received.

Stat. Auth.: ORS 526.700 - 526.730

Stats. Implemented: ORS 526.703

Hist.: DOF 1-2009, f. 1-12-09, cert. ef 2-1-09

629-022-0830

## Payment Procedures

(1) For the State Forester to approve a cost-share reimbursement payment, each cost-share component in the Practice plan must be completed according to the performance specifications and the time period identified in the Practice plan.

(2) To initiate the payment process, the Landowner must notify the State Forester of any completed cost-share component, identified in the Practice plan, for which cost-share reimbursement payment is being requested.

(3) The State Forester will review the completed cost-share components to certify that the components were completed according to the performance specifications and within the time period specified in the Practice plan.

(4) Upon certification by the State Forester that the cost-share components were completed according to the Practice plan, the State Forester will calculate the amount of the cost-share reimbursement payment to the Landowner using the appropriate cost-share rate, but not for an amount exceeding the "not-to-exceed reimbursement level" set in the Practice plan. Payment will be made payable to the Landowner.

Stat. Auth.: ORS 526.700 - 526.730

Stats. Implemented: ORS 526.703

Hist.: DOF 1-2009, f. 1-12-09, cert. ef 2-1-09

629-022-0840

## Breach of Practice Plan

(1) Any cost-share reimbursement payments under OAR 629-022-0830 are subject to repayment by the Landowner to the Trust if the Landowner fails to complete any cost-share components as specified in the Practice plan, and:

(a) Such incompleteness results in a failure in stand establishment; or

(b) Does not improve the management of the forestland subject to the cost-share application.

(2) Failure to maintain the effect of the implemented Practices or Environmental Restoration on the Forestland for at least 10 years from the date the last cost-share reimbursement payment was made will require the Landowner to repay all cost-share reimbursement payments to the Trust unless the State Forester determines that such failure was due to factors beyond the Landowner's control.

Stat. Auth.: ORS 526.700 - 526.730

Stats. Implemented: ORS 526.703

Hist.: DOF 1-2009, f. 1-12-09, cert. ef 2-1-09

629-022-0850

## Special Circumstances

(1) When the State Forester denies a cost-share reimbursement payment because the completed cost-share component does not meet the performance specification or time period in the Practice plan, the Landowner may resubmit the payment request. The State Forester must approve the payment request when one of the following conditions has been met:

(a) The Landowner repeats the completion of the cost-share component and meets the performance specification in the Practice plan;

(b) The Landowner establishes that a reasonable effort was made and failure to meet the performance specification in the Practice plan was due to factors beyond the Landowner's control; or

(c) The Landowner establishes that the cost-share component, as performed, does not jeopardize the stand establishment or the improved management of Forestland the cost-share component was designed to achieve.

(2) In case of death or incompetence of any Landowner, the State Forester must approve cost-share reimbursement payments to the successor in title or other persons or entities in control of the Landowner if the successor agrees to:

(a) Complete all remaining cost-share components in the Practice plan; and

(b) Meet all other Landowner obligations in OAR 629-022-0820.

(3) When the Landowner sells, conveys or otherwise loses control of the Forestland prior to completion of the Practice plan, the Landowner is required to repay all cost-share reimbursement payments to the Trust unless the new Landowner agrees to:

(a) Implement the remaining cost-share components in the Practice plan; and

(b) Meet all other Landowner obligations in OAR 629-022-0820.

Stat. Auth.: ORS 526.700 - 526.730

Stats. Implemented: ORS 526.703

Hist.: DOF 1-2009, f. 1-12-09, cert. ef 2-1-09

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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.

**Adm. Order No.:** DHSD 10-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 12-1-2008

**Rules Adopted:** 407-007-0355

**Rules Amended:** 407-007-0200, 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0280, 407-007-0290, 407-007-0300, 407-007-0320, 407-007-0330, 407-007-0340, 407-007-0350, 407-007-0370

**Rules Repealed:** 407-007-0260, 407-007-0270, 407-007-0310, 407-007-0360, 407-007-0380

**Subject:** The Department of Human Services's criminal history check provider rules are being updated to clarify the subjects of criminal history checks and to refine the potentially disqualifying crimes or conditions and the criteria that must be employed to determine fitness or suitability. These rules also update who is authorized to make fitness determinations and handle the criminal history check process and they specify when the Department will make the fitness determinations.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-007-0200

### Purpose and Scope

(1) Purpose. The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the reasonable screening of subject individuals (SIs) determine if they have a history of criminal behavior such that they should not be allowed to oversee, live or work closely with, or provide services to vulnerable individuals.

(2) Rule Applicability. These rules are to be applied when evaluating criminal history and potentially disqualifying conditions of an SI and conducting fitness determinations based upon such information. The fact that an SI is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640,

441.055, 443.730, 443.735, 678.153

Stats. Implemented: ORS 181.534, 181.537, 409.010, 411.060, 411.122

# ADMINISTRATIVE RULES

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHS 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHS 10-2008, f. 12-26-08, cert. ef. 1-1-09

## 407-007-0210

### Definitions

As used in OAR 407-007-0200 to 407-007-0370, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Appointing Authority" means the individual designated by the qualified entity (QE) responsible for appointing authorized designees (ADs) and contact persons (CPs). Examples include but are not limited to a human resources staff with the authority to offer and terminate employment, business owner, a member of the board of directors, director, or program administrator.

(2) "Approved" means, with regard to a fitness determination, that an SI, following a final fitness determination, is eligible to perform in positions covered by these rules.

(3) "Authorized Designee" (AD) means an individual who is designated by the Department, or an approved QE and authorized by the Department, to receive and process criminal history check request forms from SIs and criminal history information from the Department. The AD conducts fitness determinations under the authority of the Department.

(4) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(5) "Client" means any individual who receives services, care, or funding for care, through the Department.

(6) "Closed Case" means a criminal history check application that has been closed without a final fitness determination.

(7) "Contact Person" (CP) means an individual who is designated by the Department or an approved QE to receive and process criminal history check request forms from SIs, but who is not authorized to receive criminal history information from the Department. The CP is not allowed to make final fitness determinations. The CP is allowed to make the preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(8) "Criminal History Check" means obtaining and reviewing criminal history as required by these rules. The result of a criminal history check is a fitness determination or a closed case. The criminal history check includes any or all of the following:

(a) Oregon Criminal History Check. Criminal offender information is obtained from the Oregon Department of State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal history check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Oregon Department of Transportation Drivers and Motor Vehicles Division (DMV), local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(b) National Criminal History Check. Criminal history is obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information.

(c) State-Specific Criminal History Check. Criminal history is obtained from law enforcement agencies, courts or other criminal history information resources located in, or regarding, a state or jurisdiction outside Oregon.

(9) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintaining an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement (confinement shall not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities), and release, and includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(10) "Criminal Records Unit" means the Department's Criminal Records Unit (CRU).

(11) "Denied" means, with regard to a fitness determination, that an SI, following a fitness determination including a weighing test, is not eligible to work, volunteer, be employed, or hold a position covered by these rules; or be certified, licensed, registered or otherwise authorized by the Department to provide care in an environment covered by these rules.

(12) "Department" means the Oregon Department of Human Services (DHS).

(13) "Fitness Determination" means the outcome of an application and preliminary review, or the outcome of an application and completed criminal history check including gathering other information as necessary, in a case that is not closed.

(14) "Good Cause" means a valid and sufficient reason for not complying with time frames set during the criminal history check process or contested case hearing process, and may include an explanation of circumstances beyond an SI's reasonable control.

(15) "Hearing Representative" means an employee of the Department representing the Department in a contested case hearing.

(16) "Other Criminal History Information" means information obtained and used in the criminal history check process that is not "criminal offender information" from OSP. "Other criminal history information" includes police investigations and records, justice records, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, disclosures by an SI, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(17) "Position" means the position listed on the DHS Criminal History Request form for the applicant SI. The position determines whether the individual is an SI under these or Department program rules. The duties or obligations of a position are considered in making a fitness determination.

(18) "Probationary Status" means a condition in which a SI may be hired on a preliminary basis and allowed by the QE to work, volunteer, be trained, or reside in an environment following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe after a preliminary fitness determination and prior to a final fitness determination.

(19) "Qualified Entity" (QE) means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(20) "Restricted Approval" means an approval in which some restriction is made including but not limited to the SI, the SI's environment, the type or number of clients for whom the SI may care, or the information to which the SI has access.

(21) "Subject Individual" (SI) means an individual from whom the Department may require fingerprints for the purpose of conducting a national criminal history check. An SI is required to complete a criminal history check pursuant to these rules.

(a) Inclusion. An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care, or has access to client information or funds, within any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(C) Any direct care staff secured by any long term care facility licensed by the Department pursuant to ORS chapter 441 through the services of a personnel services or staffing agency who works in the long term care facility.

(D) Except as provided in paragraphs (21)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident, household member, or boarder.

(E) An individual working for a private, licensed child caring agency or system of care contractor providing child welfare services pursuant to ORS chapter 418.

(F) A homecare worker, personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(G) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Child Care Division of the Oregon Employment Department (OED). This includes all individuals who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children (see OAR 461-165-0180).

(H) An AD or CP in any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(I) An individual providing certified nursing assistant classes for employment to staff within a long term care facility.

(J) A student at a long term care facility who is enrolled in a certified nursing assistant class for employment at the facility.

## ADMINISTRATIVE RULES

(K) Any individual serving as an owner, operator or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(L) Notwithstanding subsection (21)(b) of this rule, any individual who is required to complete a criminal history check pursuant to a contract with the Department or by other program rules, if the requirement is within the statutory authority granted to the Department. Specific statutory authority or reference to these rules, and the positions under the contract subject to a criminal history check, must be specified in the contract.

(b) Exclusion. An SI does not include:

(A) Any individual under 16 years of age.

(B) An individual receiving training in a Department-licensed or Department-certified facility as a part of the required curriculum through any college, university or other training program and who is not an employee in the facility in which training is provided. Facilities must ensure that all such students or interns have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-320; and

(ii) Not allowed to have unsupervised access to vulnerable people.

(C) Residents of facilities licensed, certified, or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal history check is received from the Department. The only circumstance in which the Department will allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (21)(a)(A) – (21)(a)(C) and 21(a)(E) – (21)(a)(L) of this rule.

(D) Individuals who live in or visit relative adult foster homes. This exemption does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the OED.

(F) Individuals employed by a private business that provides services to clients and the general public and that is not regulated by the Department.

(G) Individuals employed by a business that provides appliance repair or structural repair to clients and the general public, and who are temporarily providing such services in an environment regulated by the Department. The QE shall ensure active supervision of these individuals while on the QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(H) Individuals employed by a private business in which a client of the Department is working as part of a Department-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(I) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005.

(J) Volunteers who are not under the direction and control of any entity licensed, certified, registered, or otherwise regulated by the Department.

(K) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(L) Individuals working in restaurants or at public swimming pools.

(M) Hemodialysis technicians.

(N) Individuals employed by Alcohol and Drug Programs that are certified, licensed, or approved by the Department's Addictions and Mental Health Division to provide prevention, evaluation, or treatment Services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal history checks in accordance with these rules.

(O) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(P) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal history check when being considered for a specific position.

(Q) Provider group categories that were authorized for payment by the Department for care if the provider group categories were not covered by a Department criminal record check process prior to 2004.

(R) Emergency medical technicians and first responders certified by the Department's Emergency Medical Services and Trauma Systems program.

(S) An individual employed by an entity that provides services solely contracted under ORS 414.022.

(22) "Weighing Test" means a process carried out by one or more ADs in which available information is considered, resulting in the outcome of a preliminary or final fitness determination. A weighing test is only conducted when an SI has potentially disqualifying crimes or conditions.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0220

#### Criminal History Check Required

(1) Who Conducts Criminal History Check.

(a) The Department and QEs. The Department, or a QE authorized by the Department shall conduct criminal history checks on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(b) OSP. If a nationwide criminal records check of an SI is necessary, OSP shall provide the Department results of a criminal history records check conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(2) When Criminal History Check Is Required (New Checks and Re-checks). An SI is required to have a check in the following circumstances:

(a) New SI. An individual who becomes an SI on or after the effective date of these rules.

(b) Employer Change. The SI changes employers for a different QE. If the SI's employer merges with another QE or changes names, this action is not considered a change of employers.

(c) Position Change. Except as provided in section (3) of this rule, the individual, whether previously considered an SI or not, changes positions, and the new position requires a criminal history check.

(d) Qualification Change. The individual, whether previously considered an SI or not, changes Department-issued licenses, certifications, or registrations, and the license, certification, or registration requires a criminal history check under these rules.

(e) Criminal History Check Required by Regulation or Contract. A check is required by federal or state laws or regulations, other administrative rules adopted by the Department, or by contract with the Department.

(f) Criminal History Check Is Justified. The Department or the AD has reason to believe that a check is justified. Examples include but are not limited to any indication of possible criminal behavior and quality assurance monitoring of a previously conducted criminal history check.

(3) When a Criminal History Check Is Not Required.

(a) Criminal History Check Not Required. A new check is not required only under the following circumstances:

(A) A personal care services provider, respite care provider, or an independent provider who is paid with Department funds changes or adds clients, and the prior, documented criminal history check conducted within the previous 24 months through the Department has been approved without restrictions.

(B) The SI is a child care provider as described in OAR 461-165-0180 who has been approved without restrictions and who changes or adds clients.

(C) The SI has been offered a new position, there is no change of employer, there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

(i) The previous fitness determination identified no potentially disqualifying history and the AD determines that the previous fitness determination is sufficient for the new position.

(ii) The AD determines that the new position requires the same or less contact with vulnerable individuals, personal information, financial information, or client funds.

(b) Documentation. When a criminal history check is not required under these rules, written documentation must indicate why a new check was not completed.

(4) Criminal History Check Not a Screening Tool. Criminal history checks are completed on SIs who otherwise meet the qualifications of the position in question. A criminal history check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09



# ADMINISTRATIVE RULES

407-007-0230

## Qualified Entity

(1) Approval Required. A QE and its appointing authority must be approved in writing by the Department pursuant to these rules in order to appoint an AD or CP. Unless specifically indicated in these rules, all QEs and appointing authorities discussed are considered approved.

(2) Appointment of ADs and CPs. Unless indicated under section (3) of this rule, all QEs are responsible for ensuring the completion of criminal history checks for SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE. The QE's appointing authority must appoint ADs or CPs within 30 days of Department approval.

(a) ADs Required. Except as provided in section (3) of this rule, appointing authorities in all QEs shall appoint one or more ADs, or have a written agreement with another QE to handle AD responsibilities.

(b) CPs Optional. Appointing authorities in all QEs may also appoint one or more CPs, or may have a written agreement with another QE to handle CP responsibilities.

(3) Department ADs For Fitness Determinations. The Department's appointing authorities shall appoint ADs and CPs within the Department. Department-employed ADs shall make fitness determinations for the following QEs:

(a) Private QEs With Fewer Than 10 Employees. These QEs are not eligible to appoint ADs. These QEs shall do one of the following:

(A) Use another QE to handle AD responsibilities instead of using the Department. If another QE is used, there must be a written agreement between the two QEs. The QE must be provided a copy of the agreement.

(B) Appoint one or more CPs, or have a written agreement with another QE to handle CP responsibilities. The QE must provide the Department with a copy of the agreement.

(b) QEs With SIs Not Under Their Direction and Control. The Department shall make fitness determinations for QEs with SIs not under the direction and control of the QE but who provide care under programs administered by the QE.

(A) For these SIs, the QE shall appoint one or more CPs, or use an AD or CP appointed under section (2) of this rule to handle CP responsibilities.

(B) Notwithstanding section (3)(b)(A), the QE may appoint an AD for these SIs if the QE chooses to do so, or is required to do so under other Department program administrative rules or contract with the Department. The QE shall notify the Department in writing which programs are affected and which AD will handle the responsibilities for each program.

(c) QEs Allowed Only CPs By Administrative Rule or Department Program. Administrative rules governing a type of QE may prohibit AD appointment or may allow only CP appointment. Department program offices may determine that certain types of QEs may only appoint CPs for the criminal history check process.

(d) QEs in Certain Circumstances. Department-employed ADs may make fitness determinations at the Department's discretion. Examples include but are not limited to initial opening of a new QE, newly effective administrative rules creating a new type of QEs, or an investigations or review of the QE by the Department.

(4) Revocation of QE Approval. Approval of the QE to appoint or maintain ADs may be revoked by the Department if the Department determines that the QE, or an AD or CP appointed by the QE, has failed to comply with these rules.

(a) Communication With Program Office. CRU and the appropriate entity or program office within the Department shall work together regarding any compliance issues.

(b) Plan of Action. The Department may develop a plan of action to resolve the compliance issues.

(5) Managing Criminal History Check Process. The QE's appointing authority shall appoint ADs and CPs as needed to remain in compliance with these rules. If a QE no longer has an AD or CP for any reason, the appointing authority shall ensure that new ADs or CPs are appointed within 30 days.

(6) Training and Technical Assistance. The Department shall provide QEs with periodic training and on-going technical assistance.

(7) Department Decision Final. Any decisions made by the Department in regard to these rules are final and may not be overturned by any QE, its ADs, or its CPs.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

407-007-0240

## Authorized Designees and Contact Persons

(1) Requirements. All requirements in this section must be completed within a 90-day time period. To receive Department approval, all ADs and CPs must meet the following requirements:

(a) Employment. ADs and CPs for the Department must be employed by the Department. For QEs, the ADs and CPs must be one of the following:

(A) Employed by the agency for which they will handle criminal history check information.

(B) Contracted with the QE to perform as an AD or CP.

(C) Employed by another similar QE or a parent QE (e.g., assisted living facility AD helping another assisted living facility).

(b) Application. An appointing authority shall appoint an AD or CP in writing on a form provided by the Department. The applicant AD or CP shall complete the form and submit it to the Department for processing and registration.

(c) Criminal History Check. The Department shall conduct an Oregon criminal history check, a national criminal history check, and if necessary, state-specific criminal history checks. The AD or CP must have:

(A) No conviction for a potentially disqualifying permanent review crime;

(B) No convictions for any other crime in the past 15 years;

(C) No potentially disqualifying conditions; and

(D) If an AD, Criminal Justice Information Services (CJIS) clearance and approval to view criminal history in accordance with OSP rules.

(d) Training. Complete a training program and successfully pass any testing as required by the Department.

(2) Denial of AD or CP Status. An individual's status as an AD or CP shall be denied if the individual does not meet the requirements to be an AD or CP. Once denied, the individual can no longer perform the duties of an AD or CP. There are no exceptions for individuals who do not meet the requirements to be an AD or CP.

(3) Responsibilities.

(a) Responsibilities of Both ADs and CPs. An AD or CP shall:

(A) Demonstrate understanding of and adherence to these rules in all actions pertaining to the criminal history check process.

(B) Act as the Department's designee in any action pursuant to these rules and the criminal history check process. The AD or CP may not advocate for an SI during any part of the criminal history check process, including the contesting of a fitness determination.

(C) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules.

(D) Verify the identity of a SI. This includes asking the SI for government-issued photo identification (e.g. drivers license) and confirming the information on the photo identification with the SI, the information written on the DHS Criminal History Request form, and the information written on the fingerprint card if a national criminal history check is conducted.

**Note:** If an AD or CP is verifying the identity of an SI who is being rechecked, review of government-issued photo identification may not be necessary, but the AD or CP shall verify the SI's name, any aliases or previous names, and the SI's current address.

(E) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold a position before the completion of a preliminary fitness determination and submission of the DHS Criminal History Request form to the Department along with a fingerprint card if the SI discloses out of state criminal history or residency.

(F) Ensure that when an SI is granted probationary status, the need for active supervision pursuant to OAR 407-007-0320(1)(d) is understood by each individual responsible for ensuring that active supervision is provided.

(G) Notify the Department of any changes regarding a SI who still has a criminal history check being processed, including but not limited to change of address or change in employment status.

(H) Monitor status of criminal history check applications and investigate any delays in processing.

(I) Ensure that required documentation required by these rules is processed and maintained in accordance with these rules.

(J) Notify the CRU immediately if arrested, charged, or convicted of any crime.

(b) Specific CP Limits on Preliminary Fitness Determinations. The CP may review the DHS Criminal History Request form completed by the SI to determine if the SI has any potentially disqualifying history.

(A) The CP may allow the SI to work or function on probationary status only after the CP has reviewed the DHS Criminal History Request form and determined there is no indication that the SI has any potentially disqualifying crimes or conditions.

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(B) The CP shall not allow an SI who discloses any potentially disqualifying crimes or conditions to work or function on probationary status.

(C) If the SI discloses potentially disqualifying crimes or conditions, the CP shall forward the DHS Criminal History Request form to an AD for preliminary fitness determination, or to the CRU for processing if there is no local AD available.

(c) Specific AD Responsibilities. In addition to the responsibilities listed in (3)(a) of this rule, an AD shall:

(A) Review the completed DHS Criminal History Request form (if not already done so by a CP) and conduct a preliminary fitness determination to determine eligibility for probationary status before forwarding the DHS Criminal History Request form to the CRU.

(B) Conduct a final fitness determination.

(C) Participate in the appeal process if requested by the Department.

(4) AD Conflict of Interest. An AD must not have access to LEDS information or make a fitness determination if there is a conflict of interest between the AD and the SI.

(a) Conflict Exists. A conflict of interest exists when one or more of the following circumstances are true:

(A) The AD is related to the SI. In this context, "related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or cousin.

(B) The AD has a close personal or financial relationship, other than an employee-employer relationship, with the SI.

(b) Department Completes Determination. When there is a conflict of interest and the QE has no other ADs available to conduct the fitness determination, the QE must submit the application to the Department and a Department-employed AD shall complete the fitness determination.

(5) Termination of AD or CP Status.

(a) When the AD's or CP's position with the QE ends or when the QE terminates the appointment, the Department's registration of an AD or CP is revoked. The QE shall notify the Department immediately upon the end of the position or the termination of the appointment.

(b) The Department or the QE shall suspend or revoke the appointment if a AD or CP fails to comply with responsibilities or fails to continue to meet the requirements for AD or CP, as applicable. After suspending or revoking the appointment, the QE must immediately notify the CRU in writing. If the Department takes the action, it must immediately notify the QE in writing.

(6) Appeal Rights. Denial or termination of AD or CP status is not subject to appeal rights unless the denial or termination results in loss of employment or position. Individuals losing employment or position have the same hearing rights as other SIs under these rules.

(7) Not Transferable. If an AD or CP leaves employment of the QE for any reason, the individual will no longer be considered an AD or CP. If the individual finds employment with another QE, a new appointment, application, and registration must be conducted.

(8) Review of Appointment. The Department shall review and update appointments of ADs and CPs, up to and including a new application, criminal history check, and recertification training, to assure that all requirements are met:

(a) Scheduled Review. Every three years; or

(b) Justified Review. If the Department has reason to believe the individual no longer meets the qualifications to be an AD or CP such as but not limited to indication of criminal behavior.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0250

#### Oregon Criminal History Check Process

(1) Forms Required. A QE and SI shall use the Department's form to request the criminal history check. The DHS Criminal History Request form shall include the following:

(a) Identifying Information Required. Indication of what identifying information and other information the SI is required to provide for the criminal history check process, including but not limited to name, aliases, date of birth, address, recent residency information, drivers license, disclosure of criminal history, and disclosure of other information to be considered in the event of a weighing test.

(b) Notice Regarding Social Security Number. A notice regarding disclosure of Social Security number indicating that:

(A) Disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal history check process.

(c) Fingerprinting. A notice that the SI is subject to fingerprinting as part of a criminal history check.

(2) Review of DHS Criminal History Request Form. The CRU shall review each form received for completeness and timeliness. If the CRU rejects the form, the QE's AD or CP shall immediately resolve the reasons for rejection and re-submit the form, or remove the SI from the position.

(3) Oregon Criminal History Check.

(a) Obtaining Information. Using information submitted on the DHS Criminal History Request form, the Department obtains criminal offender information from LEDS and requests other criminal history information as needed.

(b) QE Access. Only an approved QEs holding a contract with OSP for LEDS access may obtain criminal offender information. The QE's AD may:

(A) Receive and evaluate Oregon criminal history information from the Department as allowed by applicable statutes.

(B) Conduct fitness determinations.

(c) Handling of Information. Criminal offender information obtained through LEDS shall be handled in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(4) National Criminal History Check.

(a) Fingerprints Required. In addition to an Oregon criminal history check, a fingerprint-based national criminal history check is required under any of the following circumstances:

(A) The SI has lived outside Oregon:

(i) Child Care Providers (18 months). The SI is a child care provider or other individual included in OAR 461-165-0180 who has lived outside Oregon for 60 or more consecutive days during the previous 18 months.

(ii) All other SIs (5 years). The SI is has lived outside Oregon for 60 or more consecutive days during the previous five years.

(B) The LEDS check, SI disclosures, or any other information obtained by the Department indicate there may be criminal history outside of Oregon.

(C) The SI has an out-of-state drivers license.

(D) The Department has reason to question the identity or history of the SI.

(E) A fingerprint-based criminal history check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(F) The SI is an AD or CP.

(b) Fingerprints May Be Required. In addition to an Oregon criminal history check, the Department may require a fingerprint-based national criminal history check if the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(c) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from an SI under 18 years of age.

(d) Processing. The SI shall complete and submit a fingerprint card when requested by the Department.

(A) The SI shall use a fingerprint card (e.g. FBI Form FD 258) provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0250(1)(b).

(B) The SI shall submit the card within 21 days of the request to the CRU.

(i) If the card is not received within 21 days, the Department will close the application. When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) The Department may extend the time allowed for good cause.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(5) State-Specific Criminal History Check. The Department may also conduct a state-specific criminal history check instead of or in addition to a national criminal history check. Reasons for a state-specific criminal history check include but are not limited to:

(a) Out-of-State History. When the Department has reason to believe that out-of-state criminal history may exist.

(b) Illegible Fingerprints. When the Department has been unable to complete a national criminal history check due to illegible fingerprints.

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(c) Incomplete Information. When the national criminal history check results show incomplete information about charges or criminal history without final disposition.

(d) State Not Included In FBI. When there is indication of residency or criminal history in a state that does not submit all criminal history to the FBI.

(e) Other Reasons. When, based on available information, the Department has reason to believe that a state-specific check is necessary.

(6) Additional Information Required. To complete a criminal history check and fitness determination, the Department may require additional information from the SI including but not limited to additional criminal, judicial, or other background information; or proof of identity.

(7) Imminent Danger.

(a) New Criminal History Check. If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable individuals, the Department shall conduct a new criminal history check on an SI without the completion of a new DHS Criminal History Request form.

(b) Opportunity to Disclose. If the Department determines that a fitness determination based on the new criminal history check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal history, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before the completion of the fitness determination.

(8) Documentation. All criminal history checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0280

#### Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The list includes offenses that are crimes and are not intended to include offenses that are classified or treated as violations (see ORS 161.505 through 161.565).

(1) Permanent Review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

- (a) ORS 162.155, Escape II;
- (b) ORS 162.165, Escape I;
- (c) ORS 162.285, Tampering with a witness;
- (d) ORS 162.325, Hindering prosecution;
- (e) ORS 163.005, Criminal homicide;
- (f) ORS 163.095, Aggravated murder;
- (g) ORS 163.115, Murder;
- (h) ORS 163.118, Manslaughter I;
- (i) ORS 163.125, Manslaughter II;
- (j) ORS 163.145, Criminally negligent homicide;
- (k) ORS 163.160, Assault IV;
- (l) ORS 163.165, Assault III;
- (m) ORS 163.175, Assault II;
- (n) ORS 163.185, Assault I;
- (o) ORS 163.187, Strangulation;
- (p) ORS 163.190, Menacing;
- (q) ORS 163.200, Criminal mistreatment II;
- (r) ORS 163.205, Criminal mistreatment I;
- (s) ORS 163.207, Female genital mutilation;
- (t) ORS 163.208, Assault of public safety officer;
- (u) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or

mace I;

- (v) ORS 163.225, Kidnapping II;
- (w) ORS 163.235, Kidnapping I;
- (x) ORS 163.257, Custodial interference I;
- (y) ORS 163.275, Coercion;
- (z) ORS 163.355, Rape III;
- (aa) ORS 163.365, Rape II;
- (bb) ORS 163.375, Rape I;
- (cc) ORS 163.385, Sodomy III;
- (dd) ORS 163.395, Sodomy II;
- (ee) ORS 163.405, Sodomy I;
- (ff) ORS 163.408, Unlawful sexual penetration II;
- (gg) ORS 163.411, Unlawful sexual penetration I;
- (hh) ORS 163.415, Sexual abuse III;
- (ii) ORS 163.425, Sexual abuse II;

- (jj) ORS 163.427, Sexual abuse I;
- (kk) ORS 163.435, Contributing to the sexual delinquency of a minor;
- (ll) ORS 163.445, Sexual misconduct;
- (mm) ORS 163.452, Custodial sexual misconduct I;
- (nn) ORS 163.454, Custodial sexual misconduct II;
- (oo) ORS 163.465, Public indecency;
- (pp) ORS 163.515, Bigamy;
- (qq) ORS 163.525, Incest;
- (rr) ORS 163.535, Abandonment of a child;
- (ss) ORS 163.537, Buying or selling a person under 18 years of age
- (tt) ORS 163.545, Child neglect II
- (uu) ORS 163.547, Child neglect I
- (vv) ORS 163.555, Criminal nonsupport
- (ww) ORS 163.575, Endangering the welfare of a minor
- (xx) ORS 163.670, Using child in display of sexually explicit conduct;
- (yy) ORS 163.673, Dealing sexual condition of children;
- (zz) ORS 163.675, Sale sexual condition of children;
- (aaa) ORS 163.680, Paying for sexual view of children;
- (bbb) ORS 163.684, Encouraging child sexual abuse I;
- (ccc) ORS 163.686, Encouraging child sexual abuse II;
- (ddd) ORS 163.687, Encouraging child sexual abuse III;
- (eee) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
- (fff) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
- (ggg) ORS 163.693, Failure to report child pornography;
- (hhh) ORS 163.700, Invasion of personal privacy;
- (iii) ORS 163.732, Stalking;
- (jjj) ORS 163.750, Violating court's stalking protective order;
- (kkk) ORS 164.057, Aggravated theft I;
- (lll) ORS 164.055, Theft I;
- (mmm) ORS 164.075, Theft by extortion;
- (nnn) ORS 164.085, Theft by deception;
- (ooo) ORS 164.125, Theft of services;
- (ppp) ORS 164.135, Unauthorized use of a vehicle;
- (qqq) ORS 164.225, Burglary I;
- (rrr) ORS 164.215, Burglary II;
- (sss) ORS 164.315, Arson II;
- (ttt) ORS 164.325, Arson I;
- (uuu) ORS 164.377, Computer crime;
- (vvv) ORS 164.395, Robbery III;
- (www) ORS 164.405, Robbery II;
- (xxx) ORS 164.415, Robbery I;
- (yyy) ORS 165.013, Forgery I;
- (zzz) ORS 165.022, Criminal possession of a forged instrument I;
- (aaaa) ORS 165.055, Fraudulent use of a credit card;
- (bbbb) ORS 165.065, Negotiating a bad check;
- (cccc) ORS 165.581, Cellular counterfeiting I;
- (dddd) ORS 165.800, Identity theft;
- (eeee) ORS 166.005, Treason;
- (ffff) ORS 166.085, Abuse of corpse II;
- (gggg) ORS 166.087, Abuse of corpse I;
- (hhhh) ORS 166.155, Intimidation II;
- (iiii) ORS 166.165, Intimidation I;
- (jjjj) ORS 166.220, Unlawful use of weapon;
- (kkkk) ORS 166.270, Possession of weapons by certain felons;
- (llll) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
- (mmmm) ORS 166.275, Possession of weapons by inmates of institutions;
- (nnnn) ORS 166.429, Firearms used in felony;
- (oooo) ORS 166.720, Racketeering activity unlawful;
- (pppp) ORS 167.012, Promoting prostitution;
- (qqqq) ORS 167.017, Compelling prostitution;
- (rrrr) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
- (ssss) ORS 167.065, Furnishing obscene materials to minors;
- (tttt) ORS 167.070, Sending obscene materials to minors;
- (uuuu) ORS 167.075, Exhibiting an obscene performance to a minor;
- (vvvv) ORS 167.080, Displaying obscene materials to minors;
- (wwww) ORS 167.087, Disseminating obscene material;
- (xxxx) ORS 167.212, Tampering with drug records;
- (yyyy) ORS 167.262, Adult using minor in commission of controlled substance offense;



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(zzzz) ORS 167.315, Animal abuse II;  
 (aaaa) ORS 167.320, Animal abuse I;  
 (bbbb) ORS 167.322, Aggravated animal abuse I;  
 (cccc) ORS 167.333, Sexual assault of animal;  
 (dddd) ORS 181.599, Failure to report as sex offender;  
 (eeee) ORS 433.010, Spreading disease (willfully) prohibited;  
 (ffff) ORS 475.525, Sale of drug paraphernalia prohibited;  
 (gggg) ORS 475.805, Providing hypodermic device to minor prohibited;  
 (hhhh) ORS 475.840, Prohibited acts generally (regarding drug crimes);  
 (iiii) ORS 475.846, Unlawful manufacture of heroin;  
 (jjjj) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school  
 (kkkk) ORS 475.850, Unlawful delivery of heroin  
 (llll) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;  
 (mmmm) ORS 475.854, Unlawful possession of heroin;  
 (nnnn) ORS 475.856, Unlawful manufacture of marijuana;  
 (oooo) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;  
 (pppp) ORS 475.860, Unlawful delivery of marijuana;  
 (qqqq) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;  
 (rrrr) ORS 475.864, Unlawful possession of marijuana;  
 (ssss) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;  
 (tttt) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;  
 (uuuu) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;  
 (vvvv) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;  
 (wwww) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;  
 (xxxx) ORS 475.876, Unlawful manufacture of cocaine;  
 (yyyy) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;  
 (zzzz) ORS 475.880, Unlawful delivery of cocaine;  
 (aaaaa) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;  
 (bbbbb) ORS 475.884, Unlawful possession of cocaine;  
 (ccccc) ORS 475.886, Unlawful manufacture of methamphetamine;  
 (ddddd) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school;  
 (eeeee) ORS 475.890, Unlawful delivery of methamphetamine;  
 (fffff) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;  
 (ggggg) ORS 475.894, Unlawful possession of methamphetamine;  
 (hhhhh) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school;  
 (iiiiii) ORS 475.906, Penalties for distribution to minors;  
 (jjjjjj) ORS 475.910, Application of controlled substance to the body of another person;  
 (kkkkkk) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy);  
 (llllll) ORS 677.080, Prohibited acts (regarding the practice of medicine);  
 (mmmmmm) ORS 685.990, Penalties (pertaining to naturopathic medicine);  
 (nnnnnn) Any federal crime;  
 (oooooo) Any U.S. military crime;  
 (pppppp) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;  
 (qqqqqq) Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD;  
 (rrrrrr) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD;  
 (ssssss) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155;

(ttttt) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1) as determined by the AD;  
 (uuuuuu) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1) as determined by the AD;  
 (2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent risk.  
 (a) ORS 133.076 Failure to appear on criminal citation;  
 (b) ORS 162.015, Bribe giving;  
 (c) ORS 162.025, Bribe receiving;  
 (d) ORS 162.065, Perjury;  
 (e) ORS 162.075, False swearing;  
 (f) ORS 162.117, Public investment fraud;  
 (g) ORS 162.145, Escape III;  
 (h) ORS 162.175, Unauthorized departure;  
 (i) ORS 162.185, Supplying contraband;  
 (j) ORS 162.195, Failure to appear II;  
 (k) ORS 162.205, Failure to appear I;  
 (l) ORS 162.247, Interfering with a peace officer;  
 (m) ORS 162.265, Bribing a witness;  
 (n) ORS 162.275, Bribe receiving by a witness;  
 (o) ORS 162.295, Tampering with physical evidence;  
 (p) ORS 162.305, Tampering with public records;  
 (q) ORS 162.315, Resisting arrest;  
 (r) ORS 162.335, Compounding;  
 (s) ORS 162.355, Simulating legal process;  
 (t) ORS 162.365, Criminal impersonation;  
 (u) ORS 162.367, Criminal impersonation of peace officer;  
 (v) ORS 162.369, Possession of false law enforcement identification card;  
 (w) ORS 162.375, Initiating a false report;  
 (x) ORS 162.385, Giving false information to police officer for a citation;  
 (y) ORS 162.405, Official misconduct II;  
 (z) ORS 162.415, Official misconduct I;  
 (aa) ORS 162.425, Misuse of confidential information;  
 (bb) ORS 163.195, Recklessly endangering another person;  
 (cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;  
 (dd) ORS 163.245, Custodial interference II;  
 (ee) ORS 163.467, Private indecency;  
 (ff) ORS 164.043, Theft III;  
 (gg) ORS 164.045, Theft II;  
 (hh) ORS 164.095, Theft by receiving;  
 (ii) ORS 164.140, Criminal possession of rented or leased personal property;  
 (jj) ORS 164.162, Mail theft or receipt of stolen mail;  
 (kk) ORS 164.235, Possession of a burglary tool or theft device;  
 (ll) ORS 164.255, Criminal trespass I;  
 (mm) ORS 164.265, Criminal trespass while in possession of firearm;  
 (nn) ORS 164.272, Unlawful entry into motor vehicle;  
 (oo) ORS 164.354, Criminal mischief II;  
 (pp) ORS 164.365, Criminal mischief I;  
 (qq) ORS 164.369, Interfering with police animal;  
 (rr) ORS 165.007, Forgery II;  
 (ss) ORS 165.017, Criminal possession of a forged instrument II;  
 (tt) ORS 165.032, Criminal possession of a forgery device;  
 (uu) ORS 165.037, Criminal simulation;  
 (vv) ORS 165.042, Fraudulently obtaining a signature;  
 (ww) ORS 165.070, Possessing fraudulent communications device;  
 (xx) ORS 165.074, Unlawful factoring of credit card transaction;  
 (yy) ORS 165.080, Falsifying business records;  
 (zz) ORS 165.085, Sports bribery;  
 (aaa) ORS 165.090, Sports bribe receiving;  
 (bbb) ORS 165.095, Misapplication of entrusted property;  
 (ccc) ORS 165.100, Issuing a false financial statement;  
 (ddd) ORS 165.102, Obtaining execution of documents by deception;  
 (eee) ORS 165.540, Obtaining contents of communication;  
 (fff) ORS 165.543, Interception of communications;  
 (ggg) ORS 165.570, Improper use of 9-1-1 emergency reporting system.

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(hhh) ORS 165.572, Interference with making a report.  
 (iii) ORS 165.577, Cellular counterfeiting III.  
 (jjj) ORS 165.579, Cellular counterfeiting II.  
 (kkk) ORS 165.692, Making false claim for health care payment.  
 (lll) ORS 166.015, Riot.  
 (mmm) ORS 166.023, Disorderly conduct I.  
 (nnn) ORS 166.025, Disorderly conduct II.  
 (ooo) ORS 166.065, Harassment.  
 (ppp) ORS 166.076, Abuse of a memorial to the dead.  
 (qqq) ORS 166.090, Telephonic harassment.  
 (rrr) ORS 166.116, Interfering with public transportation  
 (sss) ORS 166.180, Negligently wounding another.  
 (ttt) ORS 166.190, Pointing firearm at another.  
 (uuu) ORS 166.240, Carrying of concealed weapon.  
 (vvv) ORS 166.250, Unlawful possession of firearms.  
 (www) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school.  
 (xxx) ORS 166.382, Possession of destructive device prohibited.  
 (yyy) ORS 166.384, Unlawful manufacture of destructive device.  
 (zzz) ORS 166.470, Limitations and conditions for sales of firearms.  
 (aaaa) ORS 166.480, Sale or gift of explosives to children.  
 (bbbb) ORS 166.649, Throwing an object off an overpass II.  
 (cccc) ORS 166.651, Throwing an object off an overpass I.  
 (dddd) ORS 166.660, Unlawful paramilitary activity  
 (eeee) ORS 167.007, Prostitution  
 (fff) ORS 167.090, Publicly displaying nudity or sex for advertising purposes.  
 (gggg) ORS 167.222, Frequenting a place where controlled substances are used.  
 (hhhh) ORS 167.325, Animal neglect II.  
 (iiii) ORS 167.330, Animal neglect I.  
 (jjjj) ORS 167.355, Involvement in animal fighting.  
 (kkkk) ORS 167.365, Dogfighting.  
 (llll) ORS 167.370, Participation in dogfighting.  
 (mmmm) ORS 167.820, Concealing the birth of an infant.  
 (nnnn) ORS 192.865 Criminal penalty (pertaining to Address Confidentiality Program).  
 (oooo) ORS 411.630, Unlawfully obtaining public assistance.  
 (pppp) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance).  
 (qqqq) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits.  
 (rrrr) ORS 417.990, Penalty for placement of children in violation of compact.  
 (ssss) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program.  
 (tttt) ORS 418.140, Sharing assistance prohibited.  
 (uuuu) ORS 418.250, Supervision of child-caring agencies.  
 (vvvv) ORS 418.327, Licensing of certain schools and organizations offering residential programs.  
 (wwww) ORS 418.630, Operate uncertified foster home.  
 (xxxx) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property.  
 (yyyy) ORS 475.990, Commercial drug offense.  
 (zzzz) ORS 475.912, Unlawful delivery of imitation controlled substance.  
 (aaaaa) ORS 475.916, Prohibited acts involving records and fraud.  
 (bbbbb) ORS 475.950, Failure to report precursor substances transaction.  
 (ccccc) ORS 475.955, Failure to report missing precursor substances.  
 (ddddd) ORS 475.960, Illegally selling drug equipment.  
 (eeeee) ORS 475.965, Providing false information on precursor substances report.  
 (fffff) ORS 657A.280, Failure to certify child care facility.  
 (ggggg) ORS 803.230, Forging, altering or unlawfully producing or using title or registration.  
 (hhhhh) ORS 807.620, Giving false information to police officer.  
 (iiiii) ORS 811.060, Vehicular assault of bicyclist or pedestrian.  
 (jjjjj) ORS 811.140, Reckless driving.  
 (kkkkk) ORS 811.540, Fleeing or attempting to elude police officer.  
 (lllll) ORS 811.700, Failure to perform duties of driver when property is damaged  
 (mmmmm) ORS 811.705, Failure to perform duties of driver to injured persons.  
 (nnnnn) ORS 819.300, Possession of a stolen vehicle;

(ooooo) ORS 830.475, Failure to perform the duties of an operator (boat).  
 (ppppp) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.  
 (qqqqq) Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD.  
 (rrrrr) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it cannot be considered potentially disqualifying under this section.  
 (sssss) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.  
 (ttttt) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2) as determined by the AD.  
 (uuuuu) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2) as determined by the AD.  
 (3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent risk.  
 (a) ORS 162.085, Unsworn falsification  
 (b) ORS 162.235, Obstructing governmental or judicial administration  
 (c) ORS 164.245, Criminal trespass II;  
 (d) ORS 164.335, Reckless burning;  
 (e) ORS 164.345, Criminal mischief III;  
 (f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;  
 (g) ORS 166.075, Abuse of venerated objects;  
 (h) ORS 166.095, Misconduct with emergency telephone calls;  
 (i) ORS 167.340, Animal abandonment;  
 (j) ORS 811.182, Criminal driving while suspended or revoked;  
 (k) ORS 813.010, Driving under the influence of intoxicants (DUII);  
 (L) ORS 830.315, Reckless operation of a boat;  
 (m) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance.  
 (n) ORS 830.730, False information to peace officer or State Marine Board.  
 (o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155  
 (p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3) as determined by the AD  
 (q) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3) as determined by the AD  
 (4) Evaluation Based On Oregon Laws. Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.  
 (5) Juvenile Records. Under no circumstances shall a SI be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.  
 (6) Adult Records. Under no circumstances shall an SI be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.  
 Stat. Auth.: ORS 181.537, 409.010 & 409.050  
 Stats. Implemented: ORS 181.537  
 Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

**407-007-0290**  
**Other Potentially Disqualifying Conditions**  
 The following are potentially disqualifying conditions:

## ADMINISTRATIVE RULES

(1) False Statement. A “false statement” by the subject individual to the qualified entity, authorized designee or Department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.

(2) Sex Offender. The SI is a registered sex offender in Oregon or any other jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to the Department, its clients, or vulnerable individuals if the SI has been designated a predatory sex offender as provided in ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) Warrants. An outstanding warrant against the SI for any crime in any jurisdiction.

(4) Deferred Sentence, Diversion Program. The SI has a deferred sentence, conditional discharge, or is participating in a diversion program for any potentially disqualifying crime.

(5) Probation, Parole, or Post-Supervision. The SI is currently on probation, parole, or post-prison supervision for any crime, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) Parole or Probation Violation. The SI is found in violation of post-prison supervision, parole, or probation for any crime regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date) within five years or less from the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent danger.

(7) Unresolved Arrests, Charges or Indictments. An unresolved arrest, charge, or a pending indictment, for any crime in any jurisdiction.

(8) Juvenile Adjudication. Adjudication in a juvenile court, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(9) Guilty Except For Insanity. A finding of “guilty except for insanity,” “guilty except by reason of insanity,” “not guilty by reason of insanity,” “responsible except for insanity,” or similarly worded disposition regarding a potentially disqualifying crime.

(10) Child Protective Services In Certain Department Programs. Child protective services reports that show behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals. This potentially disqualifying condition only applies when Department administrative rules specifically require a protective services background check as part of the application process including but not limited to child foster homes, adoptive families, licensed private child caring agencies, or child care providers.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0300

#### Other Information Considered

(1) Consideration of Other Information. If a SI has potentially disqualifying crimes or conditions, the AD shall perform a weighing test, considering the potentially disqualifying crimes or conditions and any other information disclosed by the SI or which is otherwise known by the AD. This information includes but is not limited to:

(a) Potentially disqualifying crimes or conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions And the details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(b) Age. Age of the SI at time of the potentially disqualifying crime or condition.

(c) Relationships. Domestic relationships or situations, when applicable.

(d) Supporting Facts. Facts that support the conviction or potentially disqualifying condition.

(e) Time. Passage of time since commission of the potentially disqualifying crime or condition.

(f) Other Laws. Consideration of Oregon or federal laws, regulations, or rules covering the position, facility, employer, or QE, in regard to the potentially disqualifying crimes or conditions.

(g) Additional Criminal Activity or Other Related Behavior. Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal history or shows a pattern relevant to criminal history.

(h) Incarceration. Periods of incarceration.

(i) Community Supervision. Status of and compliance with parole, post-prison supervision, or probation.

(j) Expungement. Whether a conviction was set aside and the legal effect of setting aside the conviction.

(k) Related Alcohol and Drug Issues. Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions, including history of use, manufacturing, delivery, treatment, rehabilitation, and relapse.

(l) Related Treatment. Evidence of other treatment or rehabilitation related to criminal activity, potentially disqualifying conditions, or other factors listed in this rule. This includes but is not limited to assessments, evaluations, or risk assessments before or after treatment or rehabilitation.

(m) Repetition. Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior related to potentially disqualifying conditions, or the SI's acceptance of responsibility for past actions, as determined by the AD.

(n) Changes. Changes in circumstances subsequent to the criminal activity or disqualifying condition.

(o) Abuse or Neglect. Information from Department protective services investigations and other investigations.

(p) Education. History of high school, college, or other education related accomplishments.

(q) Work. Work history (employee or volunteer).

(r) Licensing or Certification. History regarding licensure, certification, or training for licensure or certification.

(s) Work Reference Letters. Written recommendations from current or past employers, including Department client employers.

(t) Disclosure. Indication that criminal history or potentially disqualifying conditions have been disclosed to employer, Department client, or QE.

(u) Cooperation and Honesty. Indication of the SI's cooperation and honesty during the criminal history check process.

(v) Relevancy of History to Position. The AD shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit. If the SI is seeking to provide care for specific individuals, the AD will consider the impact of denial or approval on the individual, particularly with regard to emotional harm, safety, and best interests of the individual.

(2) Fitness Determination with Available Information. If the AD requests other information for the purpose of conducting a weighing test, and the SI does not respond in a stated time period, the AD shall make a fitness determination, if possible, based on the potentially disqualifying crimes or conditions and the available information, or close the case.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0320

#### Fitness Determinations

(1) Preliminary Fitness Determination. A preliminary fitness determination is required to determine if an SI may work, volunteer, be employed, or otherwise perform in positions prior to a final fitness determination. The Department or QE may not allow an SI to work, volunteer, or otherwise perform in positions covered by these rules prior to the completion of a preliminary fitness determination.

(a) DHS Criminal History Request Form Completed. A DHS Criminal History Request form must have been completed by the SI and reviewed by the AD or CP.

(b) Probationary Status Not Allowed by Program Rules. If probationary status is not allowed by program rules, then a preliminary fitness determination is not required, and the QE may not allow an SI to work, volunteer, or otherwise perform in positions covered by these rules prior to the completion of the final fitness determination.

(c) Preliminary Fitness Determination Outcomes. After review of the DHS Criminal History Request form, the AD or CP shall make one of the following determinations:

(A) Probationary status. Probationary status is applicable only during the timeframe prior to a final fitness determination. An SI may be hired or accepted into a position on a preliminary basis and allowed to participate in training, orientation, and work activities of volunteering, employment, or other positions covered by these rules, under the one of the following circumstances:



## ADMINISTRATIVE RULES

(i) If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the AD or CP have no reason to believe the SI has potentially disqualifying history.

(ii) When the SI discloses convictions or arrests for a potentially disqualifying crime, or any other potentially disqualifying condition, the SI may be hired on a preliminary basis only after the completion of a weighing test by an AD. The SI may be placed on probationary status only if, based on information available at the time, the AD determines that more likely than not that the SI poses no potential threat to vulnerable individuals.

(B) No hiring allowed. The AD may not place an SI on probationary status if the local AD or Department determines that:

(i) The SI may pose a potential threat to vulnerable individuals;

(ii) The SI is currently involved in contesting a criminal history check under these or other Department criminal history check rules; or

(iii) The SI has previously been denied under these rules or other Department criminal history check rules.

(iv) This prohibition against hiring may only be waived by the Department.

(d) Active Supervision. An SI who is on probationary status shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal history check rules.

(A) At all times the individual providing active supervision shall follow all of these conditions:

(i) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight or within hearing, except as provided in subsection (1)(d)(B) of this rule;

(ii) Know where the SI is and what the SI is doing; and

(iii) Periodically observe the actions of the SI.

(B) A client of the Department, an adult client's adult relation, or a child's parent or guardian, may provide active supervision without a criminal history check:

(i) The client may actively supervise a homecare worker, personal care services provider, or independent provider if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the AD.

(ii) A child's parent or guardian has the responsibility for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(e) Exemption From Active Supervision. An SI who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or prior Department criminal history check rules may function on probationary status without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption is not allowed in any of the following situations:

(A) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(B) If there is evidence of criminal activity within the previous 24 months.

(C) If, as determined by the AD or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(f) Revocation. Revocation of probationary status is not subject to hearing or appeal. The QE or the Department may immediately revoke probationary status based on any of the following reasons:

(A) There is any indication of falsification of application.

(B) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions, or any out of state arrests or convictions.

(C) The QE or Department determines that probationary status is not appropriate, based on the application, criminal history, position duties, or program rules.

(g) Hiring or Placement Not Required. Nothing in this rule is intended to require that an SI who is eligible for probationary status be hired or accepted into a position covered by these rules on a preliminary basis or be allowed to participate in training, orientation, and work activities of volunteering, employment, or other positions covered by these rules.

(2) Final Fitness Determination. The AD shall conduct a final fitness determination after all necessary criminal history checks have been completed. The AD may obtain and consider additional information as necessary to complete the final fitness determination.

(a) Final Fitness Determination Outcomes. The AD may make one of the following fitness determinations:

(A) Approved. The AD may approve an SI if:

(i) The SI has no potentially disqualifying crimes or potentially disqualifying conditions; or

(ii) The SI has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test, the AD determines that more likely than not that the SI poses no risk to vulnerable individuals.

(B) Approved With Restrictions. The AD may approve an SI with restrictions if the AD determines that more likely than not that the SI poses no risk to the physical, emotional or financial well-being of vulnerable individuals, if certain restrictions are placed on the SI. Such restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new criminal history check and fitness determination shall be completed on the SI before removing a restriction.

(C) Denied. The AD shall deny an SI whom it determines, after a weighing test, more likely than not poses a risk to the physical, emotional or financial well-being of vulnerable individuals.

(b) Fitness Determination By the Department.

(A) The Department shall complete a fitness determination for any SI for whom a national or state-specific criminal history check is completed.

(B) The Department may make the fitness determination for any new DHS Criminal History Request form received regarding an SI with the following history:

(i) The SI has previously been denied under these rules or other Department criminal history check rules; or

(ii) The SI has a history of previous fitness determinations requiring weighing tests which were completed by the Department.

(C) If after conducting a criminal history check the Department determines that, based on the presence of a potentially disqualifying crime or condition, there is a potential for imminent danger to vulnerable individuals, the Department may make a fitness determination.

(D) The Department shall conduct a fitness determination if requested by a QE when the QE is temporarily unable to provide an AD to conduct a fitness determination.

(E) If an AD requests technical assistance, the Department may provide technical assistance or make the fitness determination.

(F) If the Department has reason to believe a fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal history check and conduct a fitness determination.

(G) The Department may review fitness determinations made by local ADs and make a new fitness determination at its discretion.

(H) The Department may conduct the fitness determination if the QE or AD is under investigation regarding compliance with these rules.

(c) Department Decision. A QE, including its ADs and CPs, may not overrule a fitness determination made by the Department.

(3) Closed Case.

(a) Incomplete Application. If the SI discontinues the application or fails to cooperate with the criminal history check process, the application is considered incomplete and will be closed. Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(A) The SI refuses to be fingerprinted when required by these rules.

(B) The SI fails to respond within a stated period of time to a request for corrections to the application, fingerprints or provide any other information necessary to conduct a criminal history check and there is not enough information available to make a fitness determination.

(C) The SI withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the QE or Department.

(D) The SI is determined to be ineligible for the position for reasons other than the criminal history check.

(b) No Hearing Rights. When the application is closed without a final fitness determination, there is no right to contesting the closure.

(4) NOTICE TO SI. Upon completion of a final fitness determination, the Department or AD making the decision shall provide written notice to the SI. The notice shall:

(a) Format. Be in a format approved by the Department;

(b) Appeal Rights. If denied or approved with restrictions, include information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing; and

(c) Timely Delivery. Be mailed or hand-delivered to the SI as soon as possible, but no later than 14 calendar days after the decision. The effective date of action shall be recorded on the form.

# ADMINISTRATIVE RULES

(5) Termination Following Denial or Closed Case. When an SI is denied or a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules. A denial or closed case applies only to the position and application in question. A denial or closed case shall result in immediate dismissal.

(6) Documentation. Preliminary and final fitness determinations must be documented in writing, including any details as needed including but not limited to the weighing test, restrictions in a restricted approval, the potentially disqualifying crimes or convictions in a denial, or the reasons for a closed case.

(7) No Binding Precedent. The Department or AD shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

## 407-007-0330

### Contesting a Fitness Determination

(1) Fitness Determinations to Contest. A final fitness determination of denied or approved with restrictions is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination.

(2) Work Pending Appeal Prohibited. If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered; or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) Employment Not Guaranteed. If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) History Disputed. If an SI wishes to challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Department, the SI may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process.

(5) Legal Representation. An SI may represent himself or herself or have a legal representative during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) Challenging the Fitness Determination. An SI who wishes to challenge an adverse fitness determination may appeal the determination by requesting a contested case hearing. The appeal process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure, "Office of Administrative Hearings," OAR 137-003-0501 to 137-003-0700. The SI must be notified of the opportunity for appeal on a form available from the Department.

(a) Appeal. To request a contested case hearing, the SI shall complete and sign the hearing request form. The form is provided to the SI at the time of the notice of denial and is also available by contacting the CRU.

(b) Deadline for Appeal. The completed and signed form must be received by the Department no later than 45 days after the notice of the fitness determination is signed by the AD.

(c) Untimely Appeal. In the event an appeal is not timely, the Department will determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) Hearing on Timeliness. The Department may refer an untimely request to the Office of Administrative Hearings (OAH) for a hearing on the issue of timeliness.

(7) Informal Administrative Review.

(a) Department Conducts Review. When an SI requests a contested case hearing, the Department conducts an informal administrative review before referring the appeal to OAH.

(b) Participation. The SI must participate in the informal administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the CRU within a specified amount of time.

(8) Criminal History Check. The Department may conduct additional criminal history checks during the appeal process to update or verify the SI's criminal history.

(9) Contested Case Hearing.

(a) Procedural Documents and Exhibits. The Department shall provide to the administrative law judge and the SI a complete copy of available information. The notice of contested case and prehearing summary shall be

mailed by certified mail through the U.S. Postal Service. All other documents may be mailed by regular first class mail.

(b) Public Attendance. The informal conference and hearing are not open to the public.

(c) New Fitness Determination. The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(d) Coordination with Licensure or Certification Hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) Proposed and Final Orders.

(a) Notice of Fitness Determination as Final Order. In the following situations, the notice of fitness determination issued is final as if the SI never requested a hearing:

(A) Failure to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(B) Withdrawal of the request for hearing at any time during the appeal process.

(b) Informal Disposition. The Department may make an informal disposition based on the informal administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(c) Dismissal Order.

(A) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by the Department or the OAH. The SI may cancel the withdrawal in writing up to 14 calendar days after the date of withdrawal.

(B) The Department shall dismiss a hearing request when the SI fails to participate in the informal administrative review. Failure to participate in the informal administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the informal administrative review. The Department will review a good cause request to reinstate hearing rights if received in writing by the Department within 14 days.

(C) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department will review a good cause request to reinstate hearing rights if received in writing by the Department within 14 days.

(d) Order After Hearing. After a hearing, the administrative law judge issues a proposed and final order.

(A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(e) Reconsideration and Rehearing. Final orders after a contested case hearing are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(f) Results to QE. The Department may provide the QE with the results of the appeal.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

## 407-007-0340

### Record Keeping, Confidentiality

(1) LEDS Reports. All LEDS reports are confidential and shall be maintained by the AD in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

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

(b) SI Access. The LEDS report and photocopies of the LEDS report shall not be shown or given to the SI.

(2) National (FBI) Information. The results of a national criminal history check provided by the FBI or the OSP are confidential and may not be disseminated by the Department with following exceptions:

## ADMINISTRATIVE RULES

(a) SI Access. If a fingerprint-based criminal history check was conducted on the SI, the SI shall be provided a copy of the records if requested.

(b) Contested Case Hearing Exhibits. If authorized by the SI, the state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(3) Department Forms and Other Documentation. All completed DHS Criminal History Request forms, other criminal history information, and other records collected or developed during the criminal history check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) Retention. All criminal history check documents shall be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law. The Department may not re-create notices of fitness determinations to replace destroyed or lost originals.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0350

#### Immunity from Liability

(1) Fitness Determination. The Department, QE, AD, or CP, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537 that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) Hiring. The Department, QE, AD, or CP, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the QE's decision if they in good faith comply with:

(a) ORS 181.537; and

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) Dissemination of Information. No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0355

#### Agreements With Other Entities

The Department and the Oregon State Board of Nursing (Board) shall enter into an interagency agreement to share the results of national criminal history checks conducted pursuant to these rules on SIs who are subject to criminal history check by both the Department and the Board.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 678.153, 409.010

Hist.: DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

### 407-007-0370

#### Variances

(1) Criteria for a Variance. The Department may grant a variance to any section of these rules based upon a demonstration by the QE that the variance would not pose a significant risk to physical, emotional or financial well-being of children, the elderly, or individuals with disabilities.

(2) Variance Application. The QE requesting a variance must submit in writing an application to the Department that contains the following:

(a) Rule Citation. The section of the rule from which the variance is sought;

(b) Reason. The reason for the proposed variance;

(c) Alternative. The alternative practice, service, method, concept, or procedure proposed; and

(d) Compliance Plan. A plan and timetable for compliance with the section of the rule from which the variance is sought.

(e) Safety Ensured. An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance is in effect.

(3) Department Review. The Department's Director or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the QE of the decision within 60 calendar days of the receipt of the request by the Department with a copy to other relevant sections of the Department.

(5) Appeal Application. Appeal of the denial of a variance request must be made in writing to the Department's Director, whose decision is final.

(6) Duration of Variance. The duration of the variance must be determined by the Department. All variances must be reapplied for before the variance expires.

(7) Implementation. The QE may implement a variance only after receipt of written approval from the Department.

(8) No Precedent. Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent requests for variances.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0370, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09

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**Rule Caption:** Support for Improved Provider Enrollment Process through Federal Compliance and Legal Sufficiency.

**Adm. Order No.:** DHSD 11-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 12-27-08

**Notice Publication Date:** 12-1-2008

**Rules Adopted:** 407-120-0325

**Rules Amended:** 407-120-0300, 407-120-0310, 407-120-0320, 407-120-0330, 407-120-0340, 407-120-0350, 407-120-0360, 407-120-0370, 407-120-0380

**Rules Repealed:** 407-120-0300(T), 407-120-0310(T), 407-120-0320(T), 407-120-0325(T), 407-120-0330(T), 407-120-0340(T), 407-120-0350(T), 407-120-0360(T), 407-120-0370(T), 407-120-0380(T)

**Subject:** In January 2008, the Department laid the foundation for improved provider processes by consolidating various division rules into the Department's chapter 407 rules for provider enrollment and claiming using the Medicaid Management Information System (MMIS). Since then, the Department has been reviewing and updating the processes, forms, and rules associated with the provider enrollment process to improve and enhance compliance with federal requirements. The Department implemented the improved provider enrollment process, forms, and provider enrollment agreement and filed temporary rules necessary to provide legal sufficiency for the process and form changes effective July 1, 2008. This rule-making repeals the temporary rules that were effective July 1, 2008 through December 27, 2008.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-120-0300

#### Definitions

The following definitions apply to OAR 407-120-0300 to 407-120-0380:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices resulting in an unnecessary cost to the Department, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes actions by clients or recipients that result in unnecessary cost to the Department.

(2) "Advance Directive" means a form that allows an individual to have another individual make health care decisions when he or she cannot make decisions and informs a doctor if the individual does not want any life sustaining help if he or she is near death.

(3) "Benefit Package" means the package of covered health care services for which the client is eligible.

(4) "Billing Agent or Billing Service" means a third party or organization that contracts with a provider to perform designated services in order to facilitate claim submission or electronic transactions on behalf of the provider.

(5) "Billing Provider" means an individual, agent, business, corporation, clinic, group, institution, or other entity who, in connection with submission of claims to the Department, receives or directs payment from the



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Department on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(6) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Division of Medical Assistance Programs (DMAP).

(7) "Claim" means a bill for services, a line item of a service, or all services for one client within a bill. Claim includes a bill or an encounter associated with requesting reimbursement, whether submitted on paper or electronically. Claim also includes any other methodology for requesting reimbursement that may be established in contract or program-specific rules.

(8) "Client or Recipient" means an individual found eligible by the Department to receive services under the OHP demonstration, medical assistance program, or other public assistance programs administered by the Department. The following OHP categories are eligible for enrollment:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible families with income levels under current TANF eligibility rules;

(b) CHIP children under one year of age whose household has income under 185% Federal Poverty Level (FPL) and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) adults under 100% of the FPL are clients who are pregnant women with income under 100% of FPL;

(d) PLM adults over 100% of the FPL are clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age who have family income under 133% of the FPL or were born to mothers who were eligible as PLM adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through 18 years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP adults and couples are clients age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP families are clients, age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) recipients are clients who are eligible by virtue of their eligibility under the GA program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare eligibles are clients with concurrent Medicare eligibility with income levels under current eligibility rules;

(l) AB/AD without Medicare eligibles are clients without Medicare with income levels under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare eligibles are clients with concurrent Medicare Part A or Medicare Parts A and B eligibility with income levels under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare eligibles are clients without Medicare with income levels under current eligibility rules; or

(p) Children, Adults and Families (CAF) children are clients with medical eligibility determined by CAF or Oregon Youth Authority (OYA) receiving OHP under ORS 414.025, 418.034, and 418.187 to 418.970. These individuals are generally in placement outside of their homes and in the care or custody of CAF or OYA.

(9) "Client Representative" means an individual who can make decisions for clients who are not able to make such decisions themselves. For purposes of medical assistance, a client representative may be, in the following order of priority, an individual who is designated as the client's health care representative under ORS 127.505(12), a court-appointed guardian, a spouse or other family member as designated by the client, the individual service plan team (for developmentally disabled clients), a Department case manager, or other Department designee. To the extent that other Department programs recognize other individuals who may act as a client representative, that individual may be considered the client representative in accordance with program-specific rules or applicable contracts.

(10) "Clinical Records" means the medical, dental, or mental health records of a client. These records include the Primary Care Provider (PCP) records, the inpatient and outpatient hospital records and the Exceptional

Needs Care Coordinator (ENCC), complaint and disenrollment for cause records which may be located in the Prepaid Health Plan (PHP) administrative offices.

(11) "Conviction or Convicted" means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.

(12) "Covered Services" means medically appropriate health services or items that are funded by the legislature and described in ORS chapter 414, including OHP authorized under ORS 414.705 to 414.750, and applicable Department rules describing the benefit packages of covered services except as excluded or limited under OAR 410-141-0500 or such other public assistance services provided to eligible clients under program-specific requirements or contracts by providers required to enroll with the Department under OAR 407-120-0300 to 407-120-0380.

(13) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules.

(14) "Department" means the Department of Human Services.

(15) "Diagnosis Code" means the code as identified in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM). The primary diagnosis code is shown in all billing claims and PHP encounters, unless specifically excluded in individual provider rules. Where they exist, diagnosis codes must be shown to the degree of specificity outlined in OAR 407-120-0340 (claim and PHP encounter submission).

(16) "Electronic Data Transaction (EDT)" means the electronic exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, conducted by either web portal or electronic data interchange in accordance with the Department's electronic data transaction rule (OAR 407-120-0100 to 407-120-0200).

(17) "Exclusion" means the Department shall not reimburse a specific provider who has defrauded or abused the Department for items or services that a provider furnished.

(18) "False Claim" means a claim or PHP encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and that information would result, or has resulted, in an overpayment or improper use for per capita cost calculations.

(19) "Fraud" means an intentional deception or misrepresentation made by an individual with the knowledge that the deception could result in some unauthorized benefit to himself or herself, or some other individual. It includes any act that constitutes fraud or false claim under applicable federal or state law.

(20) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures and supplies. HCPCS consists of the Level I — American Medical Association's Physicians' Current Procedural Terminology (CPT), Level II — National Codes and Level III — Local Codes.

(21) "Health Insurance Portability and Accountability Act (HIPAA)" means a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(22) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(23) "Individual Adjustment Request" means a form (DMAP 1036) used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(24) "Medicaid" means a federal and state funded portion of the medical assistance program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department.

(25) "Medicaid Management Information System (MMIS)" means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and client eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(26) "Medical Assistance Program" means a program for payment of health care provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The medical assistance program is administered and coordinated by DMAP, a division of the Department.

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(27) “Medically Appropriate” means services and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions, or injuries and which are:

- (a) Consistent with the symptoms or treatment of a health condition;
- (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence based medicine, and professional standards of care as effective;
- (c) Not solely for the convenience of a client or a provider of the service or medical supplies; and
- (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a client in the provider’s judgment.

(28) “Medicare” means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services (CMS) under Title XVIII of the Social Security Act.

(29) “National Provider Identification (NPI)” means a federally directed provider number mandated for use on HIPAA covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 Code of Federal Regulations (CFR) 160.103) and who conduct HIPAA covered transactions electronically.

(30) “Non-Covered Services” means services or items for which the Department is not responsible for payment. Non-covered services are identified in:

- (a) OAR 410-120-1200, Excluded Services and Limitations;
- (b) OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System;
- (c) OAR 410-141-0480, OHP Benefit Package of Covered Services;
- (d) OAR 410-141-0520, Prioritized List of Health Services; and
- (e) The individual Department provider rules, program-specific rules, and contracts.

(31) “Non-Participating Provider” means a provider who does not have a contractual relationship with the PHP.

(32) “Nursing Facility” means a facility licensed and certified by the Department’s Seniors and People with Disabilities Division (SPD) defined in OAR 411-070-0005.

(33) “Oregon Health Plan (OHP)” means the Medicaid demonstration project that expands Medicaid eligibility to eligible clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(34) “Out-of-State Providers” means any provider located outside the borders of Oregon:

- (a) Contiguous area providers are those located no more than 75 miles from the border of Oregon;
- (b) Non-contiguous area providers are those located more than 75 miles from the borders of Oregon.

(35) “Post-Payment Review” means review of billings or other medical information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.

(36) “Prepaid Health Plan (PHP)” means a managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP or Addictions and Mental Health Division (AMH) on a case managed, prepaid, capitated basis under the OHP. PHP’s may be a Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), Primary Care Organization (PCO) or Chemical Dependency Organization (CDO).

(37) “Prohibited Kickback Relationships” means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951.

(38) “PHP Encounter” means encounter data submitted by a PHP or by a provider in connection with services or items reimbursed by a PHP.

(39) “Prior Authorization” means payment authorization for specified covered services or items given by Department staff, or its contracted agencies, or a county if required by the county, prior to provision of the service. A physician or other referral is not a prior authorization.

(40) “Provider” means an individual, facility, institution, corporate entity, or other organization which supplies health care or other covered services or items, also termed a performing provider, that must be enrolled with the Department in accordance with OAR 407-120-0300 to 407-120-0380 to seek reimbursement from the Department, including services provided, under program-specific rules or contracts with the Department or with a county or PHP.

(41) “Quality Improvement” means the effort to improve the level of performance of key processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality improvement includes the goals of quality assurance, quality control, quality planning, and quality management in health care where “quality of care is the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge.”

(42) “Quality Improvement Organization (QIO)” means an entity which has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a “Peer Review Organization.”

(43) “Remittance Advice” means the automated notice a provider receives explaining payments or other claim actions.

(44) “Subrogation” means the right of the state to stand in place of the client in the collection of third party resources, including Medicare.

(45) “Suspension” means a sanction prohibiting a provider’s participation in the Department’s medical assistance or other programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(46) “Termination” means a sanction prohibiting a provider’s participation in the Department’s programs by canceling the assigned provider number and agreement unless:

- (a) The exceptions cited in 42 CFR 1001.221 are met; or
- (b) Otherwise stated by the Department at the time of termination.

(47) “Third Party Resource (TPR)” means a medical or financial resource, including Medicare, which, by law, is available and applicable to pay for covered services and items for a medical assistance client.

(48) “Usual Charge” means when program-specific or contract reimbursement is based on usual charge, and is the lesser of the following, unless prohibited from billing by federal statute or regulation:

(a) The provider’s charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month’s charges;

(b) The provider’s lowest charge per unit of service on the same date that is advertised, quoted, or posted. The lesser of these applies regardless of the payment source or means of payment; or

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the FPL, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to TPR must be considered.

(49) “Visit Data” means program-specific or contract data collection requirements associated with the delivery of service to clients on the basis of an event such as a visit.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0310

#### Provider Requirements

(1) Scope of Rule. All providers seeking reimbursement from the Department, a PHP, or a county pursuant to a county agreement with the Department for the provision of covered services or items to eligible recipients, must comply with these rules, OAR 407-120-0300 to 407-120-0380, and the applicable rules or contracts of the specific programs described below:

(a) Programs administered by DMAP including the OHP and the medical assistance program that reimburses providers for services or items provided to eligible recipients, including but not limited to chapter 410, division 120; chapter 410, division 141; and provider rules in chapter 410 applicable to the provider’s service category;

(b) Programs administered by AMH that reimburse providers for services or items provided to eligible AMH recipients; or

(c) Programs administered by SPD that reimburse providers for services or items provided to eligible SPD recipients.

(2) Visit Data. Department programs use visit data to monitor service delivery, planning, and quality improvement activities. Visit data is required to be submitted by a program-specific rule or contract. A provider is required to make accurate, complete, and timely submission of visit data. Visit data is not a HIPAA transaction and does not constitute a claim for reimbursement.

(3) CHIP and Medicaid-Funded Covered Services and Items.

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(a) Covered services or items paid for with Medicaid (Title XIX) and CHIP (Title XXI) funds (referred to as the medical assistance program) are also subject to federal and state Medicaid rules and requirements. In interpreting these rules and program-specific rules or contracts, the Department shall construe them as much as possible in a manner that shall comply with federal and state medical assistance program laws and regulations, and the terms and conditions of federal waivers and the state plans

(b) If a provider is reimbursed with medical assistance program funds, the provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 United States Code (USC) 1396 et. seq., and CHIP services under Title XXI, including without limitation:

(A) Maintaining all records necessary to fully disclose the extent of the services provided to individuals receiving medical assistance and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program regarding any payments claimed by an individual or institution for providing Medicaid services as the state or federal agency may from time to time request;

(B) Complying with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 subpart (B);

(C) Maintaining written notices and procedures respecting advance directives in compliance with 42 USC 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(D) Certifying that the information is true, accurate and complete when submitting claims or PHP encounters for the provision of medical assistance services or items. Submission of a claim or PHP encounter constitutes a representation of the provider's understanding that payment of the claim shall be from federal or state funds, or both, and that any falsification or concealment of a material fact may result in prosecution under federal or state laws.

(c) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and HMOs must comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above-listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services should comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate claim form requesting payment for medical services provided to a Medicaid eligible shall be considered representation to the Department of the medical provider's compliance with the above-listed laws.

(d) Payment for any service or item furnished by a provider of CHIP or Medicaid-funded services or items may not be made by or through (directly or by power of attorney) any individual or organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the individual or organization for an added fee or a deduction of a portion of the accounts receivable.

(e) The Department shall make medical assistance provider payments only to the following:

(A) The provider who actually performed the service or provided the item;

(B) In accordance with a reassignment from the provider to a government agency or reassignment by a court order;

(C) To the employer of the provider, if the provider is required as a condition of employment to turn over his or her fees to the employer, and the employer is enrolled with the Department as a billing provider;

(D) To the facility in which the service is provided, if the provider has a contract under which the facility submits the claim, and the facility is enrolled with the Department as a billing provider;

(E) To a foundation, PHP, clinic, or similar organization operating as an organized health care delivery system, if the provider has a contract under which the organization submits the claim, and the organization is enrolled with the Department as a billing provider; or

(F) To an enrolled billing provider, such as a billing service or an accounting firm that, in connection with the submission of claims, receives or directs payments in the name of the provider, if the billing provider's compensation for this service is:

(i) Related to the cost of processing the billing;

(ii) Not related on percentage or other basis to the amount that is billed or collected and not dependent upon the collection of the payment.

(f) Providers must comply with TPR requirements in program-specific rules or contracts.

(4) Program Integrity. The Department uses several approaches to promote program integrity. These rules describe program integrity actions related to provider payments, including provider reimbursement under program-specific rules, county agreements, and contracts. The program integrity goal is to pay the correct amount to a properly enrolled provider for covered services provided to an eligible client according to the program-specific coverage criteria in effect on the date of service.

(a) Program integrity activities include but are not limited to the following:

(A) Medical or professional review including but not limited to following the evaluation of care in accordance with evidence-based principles, medical error identification, and prior authorization processes, including all actions taken to determine the coverage and appropriateness of services or items in accordance with program-specific rules or contract;

(B) Provider obligations to submit correct claims and PHP encounters;

(C) Onsite visits to verify compliance with standards;

(D) Implementation of HIPAA electronic transaction standards to improve accuracy and timeliness of claims processing and encounter reporting;

(E) Provider credentialing activities;

(F) Accessing federal Department of Health and Human Services (DHHS) database (exclusions);

(G) Quality improvement activities;

(H) Cost report settlement processes;

(I) Audits;

(J) Investigation of false claims, fraud or prohibited kickback relationships; and

(K) Coordination with the Department of Justice Medicaid Fraud Control Unit (MFCU) and other health oversight authorities.

(b) The following individuals may review a request for services or items, or audit a claim or PHP encounter for care, services, or items, before or after payment, for assurance that the specific care, item, or service was provided in accordance with the program-specific and the generally accepted standards of a provider's field of practice or specialty:

(A) Department staff or designee;

(B) Medical utilization and professional review contractor;

(C) Dental utilization and professional review contractor; or

(D) Federal or state oversight authority.

(c) Payment may be denied or subject to recovery if the review or audit determines the care, service, or item was not provided in accordance with provider rules or does not meet the criteria for quality or medical appropriateness of the care, service, or item or payment. Related provider and hospital billings shall also be denied or subject to recovery.

(d) If the Department determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(e) The Department may communicate with and coordinate any program integrity actions with the MFCU, DHHS, and other federal and state oversight authorities.

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.1455

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0320

#### Provider Enrollment

(1) In some Department program areas, being an enrolled Department provider is a condition of eligibility for a Department contract for certain services or activities. The Department requires billing providers to be enrolled as providers consistent with the provider enrollment processes set forth in this rule. If reimbursement for covered services shall be made under a contract with the Department, the provider must also meet the Department's contract requirements. Contract requirements are separate from the requirements of these provider enrollment rules. Enrollment as a provider with the Department is not a guarantee that the enrolled provider shall receive any amount of work from the Department, a PHP, or a county.

(2) Relation to Program-Specific or Contract Requirements. Provider enrollment establishes essential Department provider participation requirements for becoming an enrolled Department provider. The details of provider qualification requirements, client eligibility, covered services, how to obtain prior authorization or review (if required), documentation requirements, claims submission, and available electronic access instructions, and



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other pertinent instructions and requirements are contained in the program-specific rules or contract.

(3) Criteria for Enrollment. Prior to enrollment, providers must:

(a) Meet all program-specific or contract requirements identified in program-specific rules or contracts in addition to those requirements identified in these rules;

(b) Meet Department contracting requirements, as specified by the Department's Office of Contracts and Procurement (OC&P);

(c) Meet Department and federal licensing requirements for the type of service for which the provider is enrolling;

(d) Meet Department and federal certification requirements for the type of service for which the provider is enrolling; and

(e) Obtain a provider number from the Department for the specific service for which the provider is enrolling.

(4) Participation as an Enrolled Provider. Participation with the Department as an enrolled provider is open to qualified providers who:

(a) Meet the qualification requirements established in these rules and program-specific rules or contracts;

(b) Enroll as a Department provider in accordance with these rules;

(c) Provide a covered service or item within their scope of practice and licensure to an eligible Department recipient in accordance with program-specific rules or contracts; and

(d) Accept the reimbursement amounts established with the Department's program-specific fee structures or contracts for the service or item.

(5) Enrollment Process. To be enrolled as a Department provider, an individual or organization must submit a complete and accurate provider enrollment form, available from the Department, including all required documentation, and a signed provider enrollment agreement.

(a) Provider Enrollment Form. The provider enrollment form requests basic demographic information about the provider that shall be permanently associated with the provider or organization until changed on an update form.

(b) Provider and Program Addendum. Each Department program establishes provider-specific qualifications and program criteria that must be provided as part of the provider enrollment form.

(A) The provider must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules, and must comply with all Oregon statutes and regulations applicable to the provider's scope of service as well as the program-specific rules or contract applicable to the provision of covered services. The provider and program addendum shall specify the required documentation of professional qualifications that must be provided with the provider enrollment form.

(B) All providers of services within Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county, or city government to operate a business or to provide services. In addition providers must be registered to do business in Oregon by registering with the Oregon Secretary of State, Corporation Division, if registration is required.

(c) Provider Disclosure Form. All individuals and entities are required to disclose information used by the Department to determine whether an exclusion applies that would prevent the Department from enrolling the provider. Individual performing providers must submit a disclosure statement. All providers that are enrolling as an entity (corporation, non-profit, partnership, sole proprietorship, governmental) must submit a disclosure of ownership and control interest statement. The Department shall not make payment to any individual or entity that has been excluded from participation in federal or state programs or that employs or is managed by excluded individuals or entities.

(A) Entities must disclose all the information required on the disclosure of ownership and control interest statement. Entities must disclose the following information: name; address; taxpayer identification number of each individual with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership of five percent or more; whether any of the named individuals are related as spouse, parent, child, sibling, or other family member by marriage or otherwise; and the name and taxpayer identification number of any other disclosing entity in which an individual with an ownership or control interest in the disclosing entity also has an ownership or control interest.

(B) A provider must submit, within 35 days of the date of a request by DHHS or the Department, full and complete information about the ownership of any subcontractor with whom the provider had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and any significant business transactions between the

provider and any wholly owned supplier, or between the provider and any subcontractor, during the five-year period ending on the date of the request.

(C) Before the Department enters into a provider enrollment agreement with a provider, or renews a provider agreement, or at any time upon written request of the Department, the provider must disclose to the Department the identity and taxpayer identification number of any individual who has an ownership or control interest in the provider; or is an agent or managing employee of the provider; or the individual performing provider that has been convicted of a criminal offense related to that individual's involvement in any program under Medicare, Medicaid, or Title XX services program, since the inception of those programs.

(D) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement if the individual performing provider or any individual who has an ownership or control interest in the entity, or who is an agent or managing employee of the provider, has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under Medicare, Medicaid, Children's Health Insurance, Title XX services, or other public assistance program.

(E) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement, or contract for provider services, if it determines that the provider did not fully and accurately make any disclosure required under section (5)(c) of this rule.

(F) Taxpayer identification numbers, including social security numbers (SSN) and employer identification numbers (EIN), must be provided where indicated on the Disclosure Statement or the Disclosure of Ownership and Control Interest Statement. The Department shall use the taxpayer identification number to confirm whether the individual or entity is subject to exclusion from participation in the Oregon Medicaid program.

(6) Provider Enrollment Agreement. The provider must sign the provider enrollment agreement, and submit it for review to the Department at the time the provider submits the provider enrollment form and related documentation.

(7) Request to Conduct Electronic Transactions. A provider may request to conduct electronic transactions with the Department by enrolling and completing the appropriate authorization forms in accordance with the electronic data transaction rules (OAR 407-120-0100 to 407-120-0200).

(8) Enrollment of Providers. A provider shall be enrolled, assigned, and issued a provider number for use in specific payment or business operations when the provider meets the following:

(a) Provider submission of a complete and signed (when applicable), provider enrollment form, provider enrollment agreement, provider certification and all required documents to the Department program responsible for enrolling the provider. Provider signature must be the provider or an individual with actual authority from the provider to legally bind the provider.

(b) The Department's verification of licensing or certification or other authority to perform the service or provide the item within the lawful scope of practice recognized under Oregon law. The Department may confirm any information on the provider enrollment form or documentation submitted with the provider enrollment form, and may request additional information; and

(c) The Department's acceptance of the provider enrollment form, provider enrollment agreement, and provider certification by the Department unit responsible for approving the enrollment of the provider.

(9) Claim or Encounter Submission. Submission of a claim or encounter or other reimbursement document constitutes the enrolled provider's agreement that:

(a) The service or item was provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The provider has created and maintained all records necessary to disclose the extent of services or items provided and provider's compliance with applicable program and financial requirements, and that the provider agrees to make such information available upon request to the Department, the MFCU (for Medicaid-funded services or items), the Oregon Secretary of State, and (for federally-funded services or items) the federal funding authority and the Comptroller General of the United States, or their designees;

(c) The provider understands that payment of the claim or encounter or other reimbursement document shall be from federal or state funds, or a combination of federal and state funds.

(10) Providers Required To Use an NPI. The Department has taken action to ensure compliance with the NPI requirements pursuant to 45 CFR Part 162 when those requirements became effective on May 23, 2007. In the event of a transition period approved by CMS beyond May 23, 2008, the

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following requirements for contractors, providers, and provider-applicants shall apply:

(a) Providers and contractors that obtain an NPI are required to use their NPI where indicated. In situations where a taxonomy code may be used in conjunction with the NPI, providers must update their records as specified with the Department's provider enrollment unit. Providers applying for enrollment with the Department that have been issued an NPI must include that NPI and any associated taxonomy codes with the provider enrollment form;

(b) A provider enrolled with the Department must bill using the NPI pursuant to 45 CFR part 162.410, in addition to the Department-assigned provider number, where applicable, and continue to bill using the Department assigned provider number until the Department informs the provider that the Department assigned provider number is no longer allowed, or the NPI transition period has ended, whichever occurs first. Failure to use the NPI and Department-assigned provider number as indicated during this transition period may result in delay or rejection of claims and other transactions;

(c) The NPI and applicable taxonomy code combinations shall be cross-referenced to the Department assigned provider number for purposes of processing all applicable electronic transactions as specified in OAR 407-120-0100;

(d) The provider and PHP must cooperate with the Department with reasonable consultation and testing procedures, if any, related to implementation of the use of NPI's; and

(e) Certain provider types are not eligible for an NPI based on federal criteria for obtaining an NPI. Providers not eligible for an NPI must always use their Department provider number on claims, encounters, or other reimbursement documents for that specific provider type.

(11) The effective date of provider enrollment is the date the provider's request is received by the Department if on that date the provider has met all applicable requirements. The effective date may be retroactive for up to one year to encompass dates on which the provider furnished covered services to a medical assistance recipient for which it has not been paid, if the provider met all the applicable requirements on the retroactive effective date.

(12) Provider numbers are specific to the category of service or items authorized by the Department. Issuance of a Department-assigned provider number establishes enrollment of an individual or organization as a provider for the specific category of services covered by the provider and program addendum submitted with the provider enrollment form and enrollment agreement.

(13) Enrolled providers must provide the following updates:

(a) Notify the Department in writing of a material change in any status or condition on any element of their provider enrollment form. Providers must notify the Department in writing within 30 calendar days of the change.

(b) Enrolled providers must notify the Department in writing within 30 calendar days of any changes:

- (A) Business affiliation;
- (B) Ownership;
- (C) NPI;
- (D) Associated taxonomy codes;
- (E) Federal Tax Identification number;
- (F) Ownership and control information; or
- (G) Criminal convictions.

(c) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation.

(d) Claims submitted by, or payments made to, providers who have not timely furnished the notification of changes or have not submitted any of the items that are required due to a change may be denied or recovered.

(e) Notice of bankruptcy proceedings must be immediately provided to the Department in writing.

(14) Tax Reporting and Withholding.

(a) Providers must submit the provider's SSN for individuals or a federal EIN for entities, whichever is required for tax reporting purposes on IRS Form 1099. Billing providers must submit their SSN or EIN and must also submit the SSN or EIN of all performing providers in connection with claims or payments made to or on behalf of the performing provider. Providing this number is mandatory to be eligible to enroll as a provider. The provider's SSN or EIN is required pursuant to 42 CFR 433.37 federal tax laws at 26 USC 6041. SSN's and EIN's provided pursuant to this authority are used for the administration of state, federal, and local tax laws and the administration of this program for internal verification and admin-

istrative purposes including but not limited to identifying the provider for payment and collection activities.

(b) The Department must comply with the tax information reporting requirements of section 6041 of the Internal Revenue Code (26 USC 6041). Section 6041 requires the filing of annual information returns showing amounts paid to providers, who are identified by name, address, and SSN or EIN. The Department files its information returns with the Internal Revenue Service (IRS) using Form 1099MISC.

(c) The IRS Code section 3406(a)(1)(B) requires the Department to begin backup withholding when notified by the IRS that a taxpayer identification number reported on an information return is incorrect. If a provider receives notice of backup withholding from the Department, the provider must comply timely with the notice and provide the Department with accurate information. The Department shall comply with IRS requirements for backup withholding.

(d) Failure to notify the Department of a change in EIN or SSN may result in the Department imposing a sanction as specified in OAR 407-120-0360.

(e) If the Department notifies a provider about an error in federal tax identification number, the provider must supply a valid federal tax identification number within 30 calendar days of the date of the Department's notice. Failure to comply with this requirement may result in the Department imposing a sanction as specified in OAR 407-120-0360, for each time the provider submits an inaccurate federal tax identification number, and may require back-up withholding. Federal tax identification number requirements described in this rule refer to any requirements established by the IRS.

(15) Providers of services to clients outside the State of Oregon shall be enrolled as a provider under section (8) of this rule if they comply with the requirements of section (8) and meet the following conditions:

(a) The provider is appropriately licensed or certified and is enrolled in the provider's home state for participation in that state's Medicaid program or, for non-Medicaid services, enrolled or contracted with the state agency in the provider's state to provide the same program-specific service in the provider's state. Disenrollment or sanction from the other state's Medicaid program, or exclusion from any other federal or state health care program or comparable program-specific service delivery system is a basis for denial of enrollment, termination, or suspension from participation as a Department provider;

(b) The Oregon Board of Pharmacy issued a license to provide pharmacy services to a noncontiguous out-of-state pharmacy provider;

(c) The services must be authorized in the manner required for out-of-state services under the program-specific rules or contract for an eligible client;

(d) The services for which the provider bills are covered services under the OHP or other Department program for which covered services are authorized to be provided to the client;

(e) A facility, including but not limited to a hospital, rehabilitative facility, institution for care of individuals with mental retardation, psychiatric hospital, or residential care facility, is enrolled or contracted by the state agency in the state in which the facility is located or is licensed as a facility provider of services by Oregon; or

(f) If the provider is not domiciled in or registered to do business in Oregon, the provider must promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State, Corporation Division all information required by those agencies relative to the provider enrollment form and provider enrollment agreement. The Department shall withhold enrollment and payments until the out-of-state provider has provided documentation of compliance with this requirement to the Department unit responsible for enrollment.

(16) The provider enrollment agreement may be terminated as follows:

(a) Provider Termination Request. The provider may ask the Department to terminate the provider enrollment agreement at any time, subject to any specific provider termination requirements in program-specific rules or contracts.

(A) The request must be in writing, signed by the provider, and mailed or delivered to the Department provider enrollment unit. The notice must specify the Department-assigned provider number, if known.

(B) When accepted, the Department shall assign the provider number a termination status and effective date of the termination status.

(C) Termination of the provider enrollment agreement does not relieve the provider of any obligations for covered services or items provided under these rules, program-specific rules or contracts in effect for

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dates of services during which the provider enrollment agreement was in effect.

(b) Department Termination. The Department may terminate the provider enrollment agreement immediately upon notice to the provider, or a later date as the Department may establish in the notice, upon the occurrence of any of the following events:

(A) The Department fails to receive funding, appropriations, limitations, or other expenditure authority at levels that the Department or the specific program determines to be sufficient to pay for the services or items covered under the agreement;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted by the Department in a manner that either providing the services or items under the agreement is prohibited or the Department is prohibited from paying for such services or items from the planned funding source;

(C) The Department has issued a final order revoking the Department-assigned provider number based on a sanction under termination terms and conditions established in program-specific rules or contract;

(D) The provider no longer holds a required license, certificate or other authority to qualify as a provider. The termination shall be effective on the date the license, certificate, or other authority is no longer valid; or

(E) The provider fails to submit any claims for reimbursement for an 18-month period. The provider may reapply for enrollment.

(c) In the event of any dispute arising out of the termination of the provider enrollment agreement, the provider's sole monetary remedy is limited to covered services or items the Department determines to be compensable under the provider agreement, a claim for unpaid invoices, hours worked within any limits set forth in the agreement but not yet billed, and Department-authorized expenses incurred prior to termination. Providers are not entitled to recover indirect or consequential damages. Providers are not entitled to attorney fees, costs, or expenses of any kind.

(17) Immediate Suspension. When a provider fails to meet one or more of the requirements governing participation as a Department enrolled provider, the provider's Department-assigned provider number may be immediately suspended, in accordance with OAR 407-120-0360. The provider shall not provide services or items to clients during a period of suspension. The Department shall deny claims for payment or other reimbursement requests for dates of service during a period of suspension.

(18) The provision of program-specific or contract covered services or items to eligible clients is voluntary on the part of the provider. Providers are not required to serve all clients seeking service. If a provider undertakes to provide a covered service or item to an eligible client, the provider must comply with these rules, program-specific rules or contract.

(a) The provider performs all services, or provides all items, as an independent contractor. The provider is not an officer, employee, or agent of the Department.

(b) The provider must provide employment-related benefits and deductions for its employees that are required by law. The provider is solely responsible for its acts or omissions, including the acts or omissions of its own officers, employees, or agents. The Department's responsibility is limited to its authorization and payment obligations for covered services or items provided in accordance with these rules.

(19) For Medicaid services, a provider may not deny services to any eligible client because of the client's inability to pay the cost sharing amount imposed by the applicable program-specific or provider-specific rules or contract. A client's inability to pay does not eliminate the client's liability for the cost sharing charge.

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0325

#### Compliance with Federal and State Statutes

(1) When a provider submits a claim for services or supplies provided to a Department client, the Department shall consider the submission as the provider's representation to the Department of the provider's compliance with the applicable sections of the federal and state statutes and rules referenced in this rule, and other program rules or contract requirements of the specific program under which the claim is submitted:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) 42 CFR Part 493 Laboratory Requirements and ORS chapter 438 (Clinical Laboratories).

(c) The provider must comply and, as indicated, require all subcontractors to comply with the following federal and state requirements to the

extent that they are applicable to the items and services governed by these rules, unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time that are in effect on the date of provider's service:

(A) The provider must comply and require all subcontractors to comply with all federal laws, regulations, executive orders applicable to the items and services provided under these rules. Without limiting the generality of the foregoing, the provider expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the items and services provided under these rules:

(i) Title VI and VII of the Civil Rights Act of 1964, as amended;

(ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

(iii) The Americans with Disabilities Act of 1990, as amended;

(iv) Executive Order 11246, as amended;

(v) The Health Insurance Portability and Accountability Act of 1996;

(vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

(vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (viii) all regulations and administrative rules established pursuant to the foregoing laws;

(viii) All other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations;

(ix) All federal law governing operation of community mental health programs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the items and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402.

(B) Any provider that receives or makes annual payments under Medicaid of at least \$5,000,000, as a condition of receiving such payments, shall:

(i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or agent of the entity, that provide detailed information about the False Claims Act established under 31 USC 3729 through 3733, administrative remedies for false claims and statements established under 31 USC 38, any Oregon state laws pertaining to civil or criminal penalties for false claims and statements, and whistle blowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b(f));

(ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(iii) Include in any employee handbook for the entity, a specific discussion of the laws described in sub-paragraph (i), the rights of the employees to be protected as whistleblowers.

(C) If the items and services governed under these rules exceed \$10,000, the provider must comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR part 60);

(D) If the items and services governed under these rules exceed \$100,000, and are paid in any part with federal funds, the provider must comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act—33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Department, DHHS, and the appropriate Regional Office of the Environmental Protection Agency. The provider must include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section;

(E) The provider must comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued



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in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);

(F) The provider must provide written certification indicating that:

(i) No federal appropriated funds have been paid or shall be paid, by or on behalf of the provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(iii) The provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;

(iv) This certification is a material representation of fact upon which reliance was placed when this provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this provider agreement imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(G) If the items and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA or the federal regulations implementing HIPAA, the provider agrees to deliver the goods and services in compliance with HIPAA. The provider must comply and require all subcontractors to comply with the following:

(i) Individually identifiable health information about specific individuals is confidential. Individually identifiable health information relating to specific individuals may be exchanged between the provider and the Department for purposes directly related to the provision to clients of services that are funded in whole or in part under these rules. The provider must not use or disclose any individually identifiable health information about specific individuals in a manner that would violate Department privacy rules, (OAR 410-014-0000 et. seq.), or the Department's Notice of Privacy Practices, if done by the Department;

(ii) Providers who engage in EDI transactions with the Department in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions must execute an EDI trading partner agreement with the Department and must comply with the Department's electronic data transmission rules (OAR 407-120-0100 to 407-120-0200);

(iii) If a provider reasonably believes that the provider's or the Department's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the provider must promptly consult the Department's privacy officer. The provider or the Department may initiate a request to test HIPAA transactions, subject to available resources and the Department's testing schedule.

(H) The provider must comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;

(I) The provider must comply and require all subcontractors to comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations;"

(J) The provider must not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and providers and subcontractors

declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award;

(K) The provider must comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace:

(i) Certify that it shall provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the provider's workplace or while providing services to Department clients. The provider's notice must specify the actions that shall be taken by the provider against its employees for violation of such prohibitions;

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement required in paragraph (J)(i) above;

(iv) Notify each employee in the statement required by paragraph (J)(i) that, as a condition of employment to provide services under these rules, the employee shall abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(v) Notify the Department within ten days after receiving notice under subparagraph (J)(iv) from an employee or otherwise receiving actual notice of such conviction;

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (J)(i) through (J)(vi);

(viii) Require any subcontractor to comply with subparagraphs (J)(i) through (J)(vii);

(ix) The provider, the provider's employees, officers, agents, or subcontractors shall not provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the provider or provider's employee, officer, agent, or subcontractor has used a controlled substance, prescription, or non-prescription medication that impairs the provider or provider's employee, officer, agent, or subcontractor's performance of essential job function or creates a direct threat to Department clients or others. Examples of abnormal behavior include but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include but are not limited to slurred speech, difficulty walking or performing job activities;

(x) Violation of any provision of this subsection may result in termination of the provider agreement.

(L) The provider must comply and require all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);

(M) A provider reimbursed or seeking reimbursement with Medicaid funds must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

(i) Maintain necessary records to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish the information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by the provider or institution for providing Medicaid services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2);

(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B);

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(iv) Certify when submitting any claim for the provision of Medicaid services that the information submitted is true, accurate and complete. The provider must acknowledge provider's understanding that payment of the

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claim shall be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(N) Providers must comply with the obligations intended for contractors under ORS 279B.220, 279B.225, 279B.230 and 279B.235 (if applicable). Providers shall, to the maximum extent economically feasible in the performance of covered services, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

(O) Providers must comply with all federal, state and local tax laws, including Social Security payment requirements, applicable to payments made by the Department to the provider.

(2) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and health maintenance organizations shall comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must provide capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services must comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate billing form requesting payment for medical services provided to a Medicaid eligible client shall be deemed representation to the Department of the medical provider's compliance with the above-listed laws.

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local Children, Adults and Families Division office or police, in the manner described in ORS chapter 419.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform 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" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered, under CLIA, to be a laboratory.

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0330

#### Billing Procedures

(1) These rules only apply to covered services and items provided to clients that are paid for by the Department based on a Department fee schedule or other reimbursement method (often referred to as fee-for-service), or for services that are paid for by the Department at the request of a county for county-authorized services, in accordance with program-specific rules or contract.

(a) If a client's service or item is paid for by a PHP, the provider must comply with the billing and procedures related to claim submission established under contract with that PHP, or the rules applicable to non-participating providers if the provider is not under contract with that PHP.

(b) If the client is enrolled in a PHP, but the client is permitted by a contract or program-specific rules to obtain covered services reimbursed by the Department (such as family planning services that may be obtained from any provider), the provider must comply with the billing and claim procedures established under these rules.

(2) All Department-assigned provider numbers are issued at enrollment and are directly associated with the provider as defined in OAR 407-120-0320(12) and have the following uses:

(a) Log-on identification for the Department web portal;

(b) Claim submission in the approved paper formats; and

(c) For electronic claims submission including the web portal for atypical providers pursuant to 45 CFR 160 and 162 where an NPI is not mandated. Use of the Department-assigned provider number shall be considered authorized by the provider and the Department shall hold the provider accountable for its use.

(3) Except as provided in section (4) below, an enrolled provider may not seek payment for any covered services from:

(a) A client for covered benefits; or

(b) A financially responsible relative or representative of that client.

(4) Providers may seek payment from an eligible client or client representative as follows:

(a) From any applicable coinsurance, co-payments, deductibles, or other client financial obligation to the extent and as expressly authorized by program-specific rules or contract;

(b) From a client who failed to inform the provider of Department program eligibility, of OHP or PHP enrollment, or of other third party insurance coverage at the time the service was provided or subsequent to the provision of the service or item. In this case, the provider could not bill the Department, the PHP, or third party payer for any reason, including but not limited to timeliness of claims and lack of prior authorization. The provider must document attempts to obtain information on eligibility or enrollment;

(c) The client became eligible for Department benefits retroactively but did not meet other established criteria described in the applicable program-specific rules or contracts.

(d) The provider can document that a TPR made payments directly to the client for services provided that are subject to recovery by the provider in accordance with program-specific rules or contract;

(e) The service or item is not covered under the client's benefit package. The provider must document that prior to the delivery of services or items, the provider informed the client the service or item would not be covered by the Department;

(f) The client requested continuation of benefits during the administrative hearing process and the final decision was not in favor of the client. The client shall be responsible for any charges since the effective date of the initial notice of denial; or

(g) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this circumstance, a provider may bill the client for a covered service only if the client is informed in advance of receiving the specific service of all of the following:

(A) The requested service is a covered service and the provider would be paid in full for the covered service if the claim is submitted to the Department or the client's PHP;

(B) The estimated cost of the covered service, including all related charges, that the Department or PHP would pay, and for which the client is billed cannot be an amount greater than the maximum Department or PHP reimbursable rate or PHP rate;

(C) The provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(D) The provider must be able to document, in writing, signed by the client or the client's representative, that the client was provided the information described above; was provided an opportunity to ask questions, obtain additional information, and consult with the client's caseworker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The provider must provide a copy of the signed agreement to the client. The provider must not submit a claim for payment for the service or item to the Department or to the client's PHP that is subject to such an agreement.

(5) Reimbursement for Non-Covered Services.

(a) A provider may bill a client for services that are not covered by the Department or a PHP, except as provided in these rules. The client must be informed 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 provide written documentation, signed by the client, or the client's representative, dated prior to the delivery of services or item indicating that the client was provided this information and that the client knowingly and voluntarily agreed to be responsible for payment.

(b) Providers must not bill or accept payment from the Department or a PHP for a covered service when a non-covered service has been provided and additional payment is sought or accepted from the client. Examples include but are not limited to charging the client an additional payment to obtain a gold crown (not covered) instead of the stainless steel crown (covered) or charging an additional client payment to obtain eyeglass frames not on the covered list of frames. This practice is called buying-up, which is not permitted, and a provider may be sanctioned for this practice regardless of whether a client waiver is documented.

(c) Providers must not bill clients or the Department for a client's missed appointment.

(d) Providers must not bill clients or the Department for services or items provided free of charge. This limitation does not apply to established sliding fee schedules where the client is subject to the same standards as other members of the public or clients of the provider.

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(e) Providers must not bill clients for services or items that have been denied due to provider error such as required documentation not submitted or prior authorization not obtained.

(6) Providers must verify that the individual receiving covered services is, in fact, an eligible client on the date of service for the service provided and that the services are covered in the client's benefit package.

(a) Providers are responsible for costs incurred for failing to confirm eligibility or that services are covered.

(b) Providers must confirm the Department's client eligibility and benefit package coverage using the web portal, or the Department telephone eligibility system, and by other methods specified in program-specific or contract instructions.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0340

#### Claim and PHP Encounter Submission

(1) Claim and PHP Encounter Submission. All claims must be submitted using one of the following methods:

(a) Paper forms, using the appropriate form as described in the program-specific rules or contract;

(b) Electronically using the web portal accessed by provider-specific PIN and password. Initial activation by provider of Department-assigned provider number and PIN for web portal access invokes provider's agreement to meet all of the standards for HIPAA privacy, security, and transactions and codes sets standards as defined in 45 CFR 162;

(c) Electronically in a manner authorized by the Department's EDT rules (OAR 407-120-0100 to 407-120-0200); or

(d) Electronically, for PHP encounters, in the manner required by the PHP contract with the Department and authorized by the Department's EDT rules.

(2) Claims must not be submitted prior to delivery of service unless otherwise authorized by program-specific rules or contracts. A claim for an item must not be submitted prior to dispensing, shipping, or mailing the item unless otherwise specified in the Department's program-specific rules or contracts.

(3) Claims and PHP encounters must be submitted in compliance HIPAA transaction and code set rules. The HIPAA transaction and code set rules, 45 CFR 162, apply to all electronic transactions for which DHHS has adopted a standard.

(a) The Department may deny or reject electronic transactions that fail to comply with the federal standard.

(b) The Department is required to comply with the HIPAA code set requirements in 45 CFR 162.1000 through 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically, and with regard to the electronic claims and encounter remittance advice information, including the web portal. Compliance with the code set requirements includes the codes and the descriptors of the codes established by the official entity that maintains the code set. These federal code set requirements are mandatory and the Department has no authority to delay or alter their application or effective dates as established by DHHS.

(A) The issuance of a federal code does not mean that the Department covers the item or service described by the federal code. In the event of a variation between a Department-listed code and a national code, the provider should seek clarification from the Department program. The Department shall apply the national code in effect on the date of request or date of service and the Department-listed code may be used for the limited purpose of describing the Department's intent in identifying whether the applicable national code represents a Department covered service or item.

(B) For purposes of maintaining HIPAA code set compliance, the Department adopts by reference the required use of the version of all national code set revisions, deletions, and additions in accordance with the HIPAA transaction and code set rules in effect on the date of this rule. This code set adoption may not be construed as Department coverage or that the existence of a particular national code constitutes a determination by the Department that the particular code is a covered service or item. If the provider is unable to identify an appropriate procedure code to use on the claim or PHP encounter, the provider should contact the Department for assistance in identifying an appropriate procedure code reference in but not limited to the following:

(i) Current Procedural Terminology, Fourth Edition (CPT-4), (American Medical Association);

(ii) Current Dental Terminology (CDT), (American Dental Association);

(iii) Diagnosis Related Group (DRG), (DHHS);

(iv) Health Care Financing Administration Common Procedural Coding System (HCPCS), (DHHS);

(v) National Drug Codes (NDC), (DHHS); or

(vi) HIPAA related codes, DHHS, claims adjustment reason, claim status, taxonomy codes, and decision reason available at the Washington Publishing Company web site: <http://www.wpc.edi.com/content/view/180/223>.

(C) For electronic claims and PHP encounters, the appropriate HIPAA claim adjustment reason code for third party payer, including Medicare, explanation of payment must be used.

(c) Diagnosis Code Requirement.

(A) For claims and PHP encounters that require the listing of a diagnosis code as the basis for the service provided, the code listed on the claim must be the code that most accurately describes the client's condition and the service or item provided.

(B) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis code set including the code and the descriptor of the code by the official entity that maintains the code set, unless the requirement for a primary diagnosis code is specifically excluded in the Department's program-specific rules or contract. All diagnosis codes are required to the highest degree of specificity. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate program-specific rules or contract.

(C) Hospitals must follow national coding guidelines and must bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(d) Providers are required to provide and identify the following procedures codes.

(A) The appropriate procedure code on claims and PHP encounters as instructed in the appropriate Department program-specific rules or contract and must use the appropriate HIPAA procedure code set, set forth in 45 CFR 162.1000 through 162.1011, which best describes the specific service or item provided.

(B) Where there is one CPT, CDT, or HCPCS code that according to those coding guidelines or standards, describes an array of services, the provider must use that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase payment or to mischaracterize the service.

(4) Prohibition of False Claims. No provider or its contracted agent (including billing service or billing agent) shall submit or cause to be submitted to the Department:

(a) Any false claim for payment or false PHP encounter;

(b) Any claim or PHP encounter altered in such a way as to result in a duplicate payment for a service that has already been paid;

(c) Any claim or PHP encounter upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form or PHP encounter format; or

(d) Any claim or PHP encounter for providing services or items that have not been provided.

(5) Third Party Resources.

(a) A provider shall not refuse to furnish covered services or items to an eligible client because of a third party's potential liability for the service or item.

(b) Providers must take all reasonable measures to ensure that the Department shall be the payer of last resort, consistent with program-specific rules or contracts. If available, private insurance, Medicare, or worker's compensation must be billed before the provider submits a claim for payment to the Department, county, or PHP. For services provided to a Medicare and Medicaid dual eligible client, Medicare is the primary payer and the provider must first pursue Medicare payment (including appeals) prior to submitting a claim for payment to the Department, county, or PHP. For services not covered by Medicare or other third party resource, the provider must follow the program-specific rules or contracts for appropriate billing procedures.

(c) When another party may be liable for paying the expenses of a client's injury or illness, the provider must follow program-specific rules or contract addressing billing procedures.

(6) Full Use of Alternate Community Resources.

(a) The Department shall generally make payment only when other resources are not available for the client's needs. Full use must be made of reasonable alternate resources in the local community; and



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(b) Providers must not accept reimbursement from more than one resource for the same service or item, except as allowed in program-specific or contract TPR requirements.

(7) Timely Submission of Claim or Encounter Data.

(a) Subsection (a) through (c) below apply only to the submission of claims data or other reimbursement document to the Department, including provider reimbursement by the Department pursuant to an agreement with a county. Unless requirements for timely filing provided for in program-specific rules or applicable contracts are more specific than the timely filing standard established in this rule, all claims for services or items must be submitted no later than 12 months from the date of service.

(b) A denied claim submitted within 12 months of the date of service may be resubmitted (with resubmission documentation, as indicated within the program-specific rules or contracts) within 18 months of the date of service. These claims must be submitted to the Department in writing. The provider must present documentation acceptable to the Department verifying the claim was originally submitted within 12 months of the date of service, unless otherwise stated in program-specific rules or contracts. Acceptable documentation is:

(A) A remittance advice or other claim denial documentation from the Department to the provider showing the claim was submitted before the claim was one year old; or

(B) A copy of a billing record or ledger showing dates of submission to the Department.

(c) Exceptions to the 12-month requirement that may be submitted to the Department are as follows:

(A) When the Department confirms the Department or the client's branch office has made an error that caused the provider not to be able to bill within 12 months of the date of service;

(B) When a court or an administrative law judge in a final order has ordered the Department to make payment;

(C) When the Department determines a client is retroactively eligible for Department program coverage and more than 12 months have passed between the date of service and the determination of the client's eligibility, to the extent authorized in the program-specific rules or contracts.

(d) PHP encounter data must be submitted in accordance with 45 CFR part 162.1001 and 162.1102 and the time periods established in the PHP contract with the Department.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0350

#### Payments and Overpayments

(1) Authorization of Payment.

(a) Some services or items covered by the Department require authorization before a service, item, or level of care can be provided or before payment shall be made. Providers must check the appropriate program-specific rules or contracts for information on services or items requiring prior authorization and the process to follow to obtain authorization.

(b) Documentation submitted when requesting authorization must support the program-specific or contract justification for the service, item, or level of care. A request is considered complete if it contains all necessary documentation and meets any other requirements as described in the appropriate program-specific rules or contract.

(c) The authorizing program shall authorize the covered level of care, type of service, or item that meets the client's program-eligible need. The authorizing program shall only authorize services which meet the program-specific or contract coverage criteria and for which the required documentation has been submitted. The authorizing program may request additional information from the provider to determine the appropriateness of authorizing the service, item, or level of care within the scope of program coverage.

(d) Authorizing programs shall not authorize services or make payment for authorized services under the following circumstances:

(A) The client was not eligible at the time services were provided. The provider must check the client's eligibility each time services are provided;

(B) The provider cannot produce appropriate documentation to support that the level of care, type of service, or item meets the program-specific or contract criteria, or the appropriate documentation was not submitted to the authorizing program;

(C) The delivery of the service, item, or level of care has not been adequately documented as described in OAR 407-120-0370. Requirements for financial, clinical and other records, and the documentation in the provider's files is not adequate to determine the type, medical appropriate-

ness, or quantity of services, or items provided or the required documentation is not in the provider's files;

(D) The services or items identified in the claim are not consistent with the information submitted when authorization was requested or the services or items provided are retrospectively determined not to be authorized under the program-specific or contract criteria;

(E) The services or items identified in the claim are not consistent with those which were provided;

(F) The services or items were not provided within the timeframe specified on the authorization of services document; or

(G) The services or items were not authorized or provided in compliance with the program-specific rules or contracts.

(e) Payment made for services or items described in subsections (d)(A) through (G) of this rule shall be recovered.

(f) Retroactive Department Client Eligibility.

(A) When a client is determined to be retroactively eligible for a Department program, or is retroactively disenrolled from a PHP or services provided after the client was disenrolled from a PHP, authorization for payment may be given if the following conditions are met:

(i) The client was eligible on the date of service and the program-specific rules or contract authorize the Department to reimburse the provider for services provided to clients made retroactively eligible;

(ii) The services or items provided to the client meet all other program-specific or contract criteria and Oregon Administrative Rules;

(iii) The request for authorization is received by the appropriate Department branch or program office within 90 days of the date of service; and

(iv) The provider is enrolled with the Department on the date of service, or becomes enrolled with the Department no later than the date of service as provided in OAR 407-120-0320(11).

(B) Requests for authorization received after 90 days from date of service require all the documentation required in subsection (f)(A)(i), (ii) and (iv) and documentation from the provider stating why the authorization could not have been obtained within 90 days of the date of service.

(g) Service authorization is valid for the time period specified on the authorization notice, but shall not exceed 12 months, unless the client's benefit package no longer covers the service, in which case the authorization terminates on the date coverage ended.

(h) Service authorization for clients with other insurance or for Medicare beneficiaries is governed by program-specific rules or contracts.

(2) Payments.

(a) This rule only applies to covered services and items provided to eligible clients within the program-specific or contract covered services or items in effect on the date of service that are paid for by the Department based on program-specific or contract fee schedules or other reimbursement methods, or for services that are paid for by the Department at the request of a county for county-authorized services in accordance with program-specific or provider-specific rules or contracts.

(b) If the client's service or item is paid for by a PHP, the provider must comply with the payment requirements established under contract with that PHP, and in accordance with OAR 410-120 and 410-141, applicable to non-participating providers.

(c) The Department shall pay for services or items based on the reimbursement rates and methods specified in the applicable program-specific rules or contract. Provider reimbursement on behalf of a county must include county service authorization information.

(d) Providers must accept, as payment in full, the amounts paid by the Department in accordance with the fee schedule or reimbursement method specified in the program-specific rules or contract, plus any deductible, co-payment, or coinsurance required to be paid by the client. Payment in full includes:

(A) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding the Department's allowable payment; or

(B) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the program-specific rules or contracts.

(e) The Department shall not make payments for duplicate services or items. The Department shall not make a separate payment or co-payment to a provider for services included in the provider's all-inclusive rate if the provider has been or shall be reimbursed by other resources for the service or item.

(f) Prepayment and Post-Payment Review. Payment by the Department does not limit the Department or any state or federal oversight

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entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical, clinical, program-specific or contract review, audit, or other post-payment review determines the service or item was not provided in accordance with applicable rules or contracts or does not meet the program-specific or contract criteria for quality of care, or appropriateness of the care, or authorized basis for payment.

### (3) Recovery of Overpayments to Providers — Recoupments and Refunds

(a) The Department may deny payment or may deem payments subject to recovery as an overpayment if a review or audit determines the item or service was not provided in accordance with the Department's rules, terms of contract, or does not meet the criteria for quality of care, or appropriateness of the care or payment. Related provider billings shall also be denied or subject to recovery.

(b) If a provider determines that a submitted claim or encounter is incorrect, the provider must submit an individual adjustment request and refund the amount of the overpayment, if any, or adjust the claim or encounter, consistent with the requirements in program-specific rules or contracts.

(c) The Department may determine, as a result of review or other information, that a payment should be denied or that an overpayment has been made to a provider, which indicates that a provider may have submitted claims or encounters, or received payment to which the provider is not properly entitled. Such payment denial or overpayment determinations may be based on but not limited to the following:

(A) The Department paid the provider an amount in excess of the amount authorized under a contract, state plan or Department rule;

(B) A third party paid the provider for services, or portion thereof, previously paid by the Department;

(C) The Department paid the provider for services, items, or drugs that the provider did not perform or provide;

(D) The Department paid for claims submitted by a data processing agent for whom a written provider or billing agent or billing service agreement was not on file at the time of submission;

(E) The Department paid for services and later determined they were not part of the client's program-specific or contract-covered services;

(F) Coding, data processing submission, or data entry errors;

(G) Medical, dental, or professional review determines the service or item was not provided in accordance with the Department's rules or contract or does not meet the program-specific or contract criteria for coverage, quality of care, or appropriateness of the care or payment;

(H) The Department paid the provider for services, items, or drugs when the provider did not comply with the Department's rules and requirements for reimbursement; or

(I) The provider submitted inaccurate, incomplete or false encounter data to the Department.

(d) Prior to identifying an overpayment, the Department may contact the provider requesting preliminary information and additional documentation. The provider must provide the requested documentation within the specified time frame.

(e) When an overpayment is identified, the Department shall notify the provider in writing as to the nature of the discrepancy, the method of computing the overpayment, and any further action that the Department may take on the matter. The notice may require the provider to submit applicable documentation for review prior to requesting an appeal from the Department, and may impose reasonable time limits for when documentation must be provided for Department consideration. The notice shall inform the provider of the process for appealing the overpayment determination.

(f) The Department may recover overpayments made to a provider by direct reimbursement, offset, civil action, or other legal action:

(A) The provider must make a direct reimbursement to the Department within 30 calendar days from the date of the notice of the overpayment, unless other regulations apply.

(B) The Department may grant the provider an additional period of time to reimburse the Department upon written request made within 30 calendar days from the date of the notice of overpayment. The provider must include a statement of the facts and reasons sufficient to show that repayment of the overpayment amount should be delayed pending appeal because:

(i) The provider shall suffer irreparable injury if the overpayment notice is not delayed;

(ii) There is a reason to believe that the overpayment is incorrect or is less than the amount in the notice, and the provider has timely filed an

appeal of the overpayment, or that the provider accepts the amount of the overpayment but is requesting to make repayment over a period of time;

(iii) A proposed method for assuring that the amount of the overpayment can be repaid when due with interest including but not limited to a bond, irrevocable letter of credit, or other undertaking, or a repayment plan for making payments, including interest, over a period of time;

(iv) Granting the delay shall not result in substantial public harm; and

(v) Affidavits containing evidence relied upon in support of the request for stay.

(C) The Department may consider all information in the record of the overpayment determination, including provider cooperation with timely provision of documentation, in addition to the information supplied in provider's request. If provider requests a repayment plan, the Department may require conditions acceptable to the Department before agreeing to a repayment plan. The Department must issue an order granting or denying a repayment delay request within 30 calendar days after receiving it;

(D) A request for hearing or administrative review does not change the date the repayment of the overpayment is due; and

(E) The Department may withhold payment on pending claims and on subsequently received claims for the amount of the overpayment when overpayments are not paid as a result of subsection (B)(i);

(f) In addition to any overpayment, the Department may impose a sanction on the provider in connection with the actions that resulted in the overpayment. The Department may, at its discretion, combine a notice of sanction with a notice of overpayment.

(g) Voluntary submission of an adjustment claim or encounter transaction or an individual adjustment request or overpayment amount after notice from the Department does not prevent the Department from issuing a notice of sanction. The Department may take such voluntary payment into account in determining the sanction.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

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### 407-120-0360

#### Consequences of Non-Compliance and Provider Sanctions

(1) There are two classes of provider sanctions, mandatory and discretionary, that may be imposed for non-compliance with the provider enrollment agreement.

(2) Except as otherwise provided, the Department shall impose provider sanctions at the direction of the assistant director of the Department's division whose budget includes payment for the services involved.

(3) Mandatory Sanctions. The Department shall impose mandatory sanctions and suspend the provider from participation in the Department's programs:

(a) When a provider has been convicted (as that term is defined in 42 CFR part 1001.2) 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 other disqualifying criminal conviction pursuant to program-specific rules or contract;

(b) When a provider is excluded from participation in federal or state health care programs by the Office of the Inspector General of DHHS or from the Medicare (Title XVIII) program of the Social Security Act as determined by the Secretary of DHHS. The provider shall be excluded and suspended from participation with the Department for the duration of exclusion or suspension from the Medicare program or by the Office of the Inspector General; or

(c) If the provider fails to disclose ownership or control information required under 42 CFR part 455.104 that is required to be reported at the time the provider submits a provider enrollment form or when there is a material change in the information that must be reported, or information related to business transactions required to be provided under 42 CFR part 455.105 upon request of federal or state authorities.

(4) Discretionary Sanctions. When the Department determines the provider fails to meet one or more of the Department's requirements governing participation in its programs the Department may impose discretionary sanctions. Conditions that may result in a discretionary sanction include, but are not limited to when a provider has:

(a) Been convicted of fraud related to any federal, state, or locally financed health care program or committed fraud, received kickbacks, or committed other acts that are subject to criminal or civil penalties under the Medicare or Medicaid statutes;

(b) Been convicted of interfering with the investigation of health care fraud;

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(c) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance or other potentially disqualifying crime, as determined under program-specific rules or contracts;

(d) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity either:

(A) Had his or her professional license suspended or revoked, or otherwise lost such license; or

(B) Surrendered his or her license while a formal disciplinary proceeding is pending before the relevant licensing authority.

(e) Been suspended or excluded from participation in any federal or state program for reasons related to professional competence, professional performance, or other reason;

(f) Billed excessive charges including but not limited to charging in excess of the usual charge, furnished items or services in excess of the client's needs or in excess of those services ordered by a provider, or in excess of generally accepted standards or quality that fail to meet professionally recognized standards;

(g) Failed to furnish necessary covered services as required by law or contract with the Department if the failure has adversely affected or has a substantial likelihood of adversely affecting the client;

(h) Failed to disclose required ownership information;

(i) Failed to supply requested information on subcontractors and suppliers of goods or services;

(j) Failed to supply requested payment information;

(k) Failed to grant access or to furnish as requested, records, or grant access to facilities upon request of the Department or the MFCU conducting their regulatory or statutory functions;

(l) In the case of a hospital, failed to take corrective action as required by the Department, based on information supplied by the QIO to prevent or correct inappropriate admissions or practice patterns, within the time specified by the Department;

(m) In the case of a licensed facility, failed to take corrective action under the license as required by the Department within the time specified by the Department;

(n) Defaulted on repayment of federal or state government scholarship obligations or loans in connection with the provider's health profession education;

(A) Providers must have made a reasonable effort to secure payment;

(B) The Department must take into account access of beneficiaries to services; and

(C) Shall not exclude a community's sole physician or source of essential specialized services;

(o) Repeatedly submitted a claim with required data missing or incorrect:

(A) When the missing or incorrect data has allowed the provider to:

(i) Obtain greater payment than is appropriate;

(ii) Circumvent prior authorization requirements;

(iii) Charge more than the provider's usual charge to the general public;

(iv) Receive payments for services provided to individuals who were not eligible; or

(v) Establish multiple claims using procedure codes that overstate or misrepresent the level, amount, or type of services or items provided.

(B) Does not comply with the requirements of OAR 410-120-1280.

(p) Failed to develop, maintain, and retain, in accordance with relevant rules and standards, adequate clinical or other records that document the client's eligibility and coverage, authorization (if required by program-specific rules or contracts), appropriateness, nature, and extent of the services or items provided;

(q) Failed 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;

(r) Failed to develop, maintain, and retain adequate financial or other records that support information submitted on a cost report;

(s) Failed to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulations;

(t) Submitted claims or written orders contrary to generally accepted standards of professional practice;

(u) Submitted claims for services that exceed the requested or agreed upon amount by the OHP client, the client representative, or requested by another qualified provider;

(v) Breached the terms of the provider contract or agreement;

(w) Failed to comply with the terms of the provider certifications on the claim form;

(x) Rebated or accepted a fee or portion of a fee for a client referral; or collected a portion of a service fee from the client and billed the Department for the same service;

(y) Submitted false or fraudulent information when applying for a Department-assigned provider number, or failed to disclose information requested on the provider enrollment form;

(z) Failed to correct deficiencies in operations after receiving written notice of the deficiencies from the Department;

(aa) Submitted any claim for payment for which the Department has already made payment or any other source unless the amount of the payment from the other source is clearly identified;

(bb) Threatened, intimidated, or harassed clients, client representatives, or client relatives in an attempt to influence payment rates or affect the outcome of disputes between the provider and the Department;

(cc) Failed to properly account for a client's personal incidental funds including but not limited to using a client's personal incidental funds for payment of services which are included in a medical facility's all-inclusive rates;

(dd) Provided or billed for services provided by ineligible or unsupervised staff;

(ee) Participated in collusion that resulted in an inappropriate money flow between the parties involved;

(ff) Refused or failed to repay, in accordance with an accepted schedule, an overpayment established by the Department;

(gg) Failed to report to Department payments received from any other source after the Department has made payment for the service; or

(hh) Collected or made repeated attempts to collect payment from clients for services covered by the Department, under OAR 410-120-1280.

(5) A provider who has been excluded, 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, must not submit claims for payment, either personally or through claims submitted by any billing agent or service, billing provider or other provider, for any services or supplies provided under the medical assistance programs, except those services or supplies provided prior to the date of exclusion, suspension or termination.

(6) Providers must not submit claims for payment to the Department for any services or supplies provided by an individual or provider entity that has been excluded, 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, except for those services or supplies provided prior to the date of exclusion, suspension or termination.

(7) When the provisions of sections (5) or (6) are violated, the Department may suspend or terminate the billing provider or any provider who is responsible for the violation.

(8) Sanction Types and Conditions.

(a) A mandatory sanction imposed by the Department pursuant to section (3) may result in any of the following:

(A) The provider shall either be terminated or suspended from participation in the Department's programs. No payments of Title XIX, Title XXI or other federal or state funds shall be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42CFR part 1001.221 are met; or

(ii) Otherwise stated by the Department at the time of termination.

(B) No payments of Title XIX, Title XXI, or other federal or state funds shall be made for services provided during the suspension. The provider number shall be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved. The minimum duration of a suspension shall be determined by the DHHS Secretary, under the provisions of 42 CFR parts 420, 455, 1001, or 1002. The Department may suspend a provider from participation in the medical assistance programs longer than the minimum suspension determined by the DHHS secretary.

(b) The Department may impose the following discretionary sanctions on a provider pursuant to OAR 410-120-1400(4):

(A) The provider may be terminated from participation in the Department's programs. No payments of Title XIX, Title XXI or other federal or state funds shall be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42 CFR part 1001.221 are met; or

(ii) Otherwise stated by the Department at the time of termination.



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(B) The provider may be suspended from participation in the Department's programs for a specified length of time, or until specified conditions for reinstatement are met and approved by the Department. No payments of Title XIX, Title XXI, or other federal or state funds shall be made for services provided during the suspension. The provider number shall be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved.

(C) The Department may withhold payments to a provider;

(D) The provider may be required to attend provider education sessions at the expense of the sanctioned provider;

(E) The Department may require that payment for certain services are made only after the Department has reviewed documentation supporting the services;

(F) The Department may require repayment of amounts paid or provide for reduction of any amount otherwise due the provider; and

(G) Any other sanctions reasonably designed to remedy or compel future compliances with federal, state, or Department regulations.

(c) The Department shall consider the following factors in determining the sanction to be imposed. Factors include but are not limited to:

(A) Seriousness of the offense;

(B) Extent of violations by the provider;

(C) History of prior violations by the provider;

(D) Prior imposition of sanctions;

(E) Prior provider education;

(F) Provider willingness to comply with program rules;

(G) Actions taken or recommended by licensing boards or a QIO;

(H) Adverse impact on the availability of program-specific or contract covered services or the health of clients living in the provider's service area; and

(I) Potential financial sanctions related to the non-compliance may be imposed in an amount that is reasonable in light of the anticipated or actual harm caused by the non-compliance, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

(d) When a provider fails to meet one or more of the requirements identified in OAR 407-120-0300 through 407-120-0380, the Department, in its sole discretion, may immediately suspend the provider's Department assigned billing number and any electronic system access code to prevent public harm or inappropriate expenditure of public funds.

(A) The provider subject to immediate suspension is entitled to a contested case hearing pursuant to ORS 183 to determine whether the provider's Department assigned number and electronic system access code may be revoked; and

(B) The notice requirements described in section (5) of this rule do not preclude immediate suspension, in the Department'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.

(e) If the Department sanctions a provider, the Department shall notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction shall identify:

(A) The factual basis used to determine the alleged deficiencies and a reference to the particular sections of the statutes and rules involved;

(B) Explanation of actions expected of the provider;

(C) Explanation of the Department's intended action;

(D) The provider's right to dispute the Department's allegations and submit evidence to support the provider's position;

(E) The provider's right to appeal the Department's proposed actions pursuant to ORS 183;

(F) A statement of the authority and jurisdiction under which the appeal may be requested and description of the procedure and time to request an appeal; and

(G) A statement indicating whether and under what circumstances an order by default may be entered.

(f) If the Department decides to sanction a provider, the Department 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.

(g) The provider may appeal the Department's immediate or proposed sanction or other actions the Department intends to take. The provider must appeal this action separately from any appeal of audit findings and overpayments. These include but are not limited to the following:

(A) Termination or suspension from participation in the Medicaid-funded medical assistance programs;

(B) Termination or suspension from participation in the Department's state-funded programs; or

(C) Revocation of the provider's Department assigned provider number.

(h) Other provisions:

(A) When a provider has been sanctioned, all other provider entities in which the provider has ownership of five percent or greater, or control of, may also be sanctioned;

(B) When a provider has been sanctioned, the Department may notify the applicable professional society, board of registration or licensure, federal or state agencies, OHP, PHP's and the National Practitioner Data Base of the findings and the sanctions imposed;

(C) At the discretion of the Department, providers who have previously been sanctioned or suspended may or may not be re-enrolled as Department providers;

(D) Nothing in this rule prevents the Department from simultaneously seeking monetary recovery and imposing sanctions against the provider;

(E) Following a contested case hearing in which a provider has been found to violate ORS 411.675, the provider shall be liable to the Department for treble the amount of payments received as a result of each violation.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0370

#### Requirements for Financial, Clinical, and Other Records

(1) The Department shall analyze and monitor the operation of its programs and audit and verify the accuracy and appropriateness of payment, utilization of services, or items.

(2) The Department shall comply with client coverage criteria and requirements for the level of care or service or item authorized or reimbursed by the Department and the quality of covered services or items and service or item delivery, and access to covered services or items.

(3) The provider and the provider's designated billing service or other entity responsible for the maintenance of financial, service delivery, and other records must:

(a) Develop and maintain adequate financial and service delivery records and other documentation which supports the specific care, items, or services for which payment has been requested. The Department shall not make payment for services that are not adequately documented. The following documentation must be completed before the service is billed to the Department:

(A) All records documenting the specific service provided, the number of services or items comprising the service provided, the extent of the service provided, the dates on which the service was provided, and identification of the individual who provided the service. Patient account and financial records must also 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. For cost reimbursed services, the provider must maintain adequate records to thoroughly and accurately explain how the amounts reported on the cost statement were determined.

(B) Service delivery, clinical records, and visit data, including records of all therapeutic services, must document the basis for service delivery and record visit data if required under program-specific rules or contracts. A client's clinical record must be annotated each time a service is provided and signed or initialed by the individual providing the service or must clearly identify the individual providing the service. Information contained in the record must be sufficient in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule, program-specific rules, and any pertinent contracts.

(C) All information about a client obtained by the provider or its officers, employees, or agents in the performance of covered services, including information obtained in the course of determining eligibility, seeking authorization, and providing services, is confidential. The client information must be used and disclosed only to the extent necessary to perform these functions.

(b) Implement policies and procedures to ensure confidentiality and security of the client's information. These procedures must ensure the provider may release such information in accordance with program-specific federal and state statutes or contract, which may include but is not limited to, ORS 179.505 to 179.507, 411.320, 433.045, 42 CFR part 2, 42 CFR

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part 431 subpart F, 45 CFR 205.50, and ORS 433.045(3) with respect to HIV test information.

(c) Ensure the use of electronic record-keeping systems does not alter the requirements of this rule.

(A) A provider's electronic record-keeping system includes electronic transactions governed by HIPAA transaction and code set requirements and records, documents, documentation, and information include all information, whether maintained or stored in electronic media, including electronic record-keeping systems, and information stored or backed up in an electronic medium.

(B) If a provider maintains financial or clinical records electronically, the provider must be able to provide the Department with hard-copy versions. The provider must also be able to provide an auditable means of demonstrating the date the record was created and the identity of the creator of a record, the date the record was modified, what was changed in the record and the identity of any individual who has modified the record. The provider must supply the information to individuals authorized to review the provider's records under subsection (e) of this rule.

(C) Providers may comply with the documentation review requirements in this rule by providing the electronic record in an electronic format acceptable to an authorized reviewer. The authorized reviewer must agree to receive the documentation electronically.

(d) Retain service delivery, visit, and clinical records for seven years and all other records described in this rule, program-specific rules and contract for at least five years from the date of service.

(e) Furnish requested documentation (including electronically recorded information or information stored or backed up in an electronic medium) immediately or within the time-frame specified in the written request received from the Department, the Oregon Secretary of State, DHHS or other federal funding agency, Office of Inspector General, the Comptroller General of the United States (for federally funded programs), MFCU (for Medicaid-funded services or items), or the client representative. Copies of the documents may be furnished unless the originals are requested. At their discretion, official representatives of the Department, Medicaid Fraud Unit, DHHS, or other authorized reviewers may review and copy the original documentation in the provider's place of business. Upon written request of the provider, the program or the unit, may, at its sole discretion, modify or extend the time for provision of such records if, in the opinion of the program or unit good cause for such extension is shown. Factors used in determining if good cause exists include:

(A) Whether the written request was made prior to the deadline for production;

(B) If the written request is made after the deadline for production, the amount of time lapsed since that deadline;

(C) The efforts already made to comply with the request;

(D) The reasons the deadline cannot be met;

(E) The degree of control that the provider had over its ability to produce the records prior to the deadline; and

(F) Other extenuating factors.

(f) Access to records, inclusive of clinical charts and financial records does not require authorization or release from the client, unless otherwise required by more restrictive state and federal regulations if the purpose of such access is:

(A) To perform billing review activities;

(B) To perform utilization review activities;

(C) To review quality, quantity, medical appropriateness of care, items, and services provided;

(D) To facilitate service authorization and related services;

(E) To investigate a client's hearing request;

(F) To facilitate investigation by the MFCU or DHHS; or

(G) To review records necessary to the operation of the program.

(g) Failure to comply with requests for documents within the specified time-frame means that the records subject to the request may be deemed by the Department not to exist for purposes of verifying appropriateness of payment, clinical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and subjects the provider to possible denial or recovery of payments made by the Department or to sanctions.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

### 407-120-0380

#### Fraud and Abuse

(1) Providers shall promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in Department administration, to the MFCU, or to the Department's audit unit.

(2) Providers must permit the MFCU and the Department to inspect, copy, evaluate, or audit books, records, documents, files, accounts, and facilities, without charge, as required to investigate allegations or incidents of fraud or abuse.

(3) Providers aware of suspected fraud or abuse by a client must report the incident to the Department's fraud unit.

(4) The Department may share information for health oversight purposes with the MFCU and other federal or state health oversight authorities.

(5) The Department may take actions necessary to investigate and respond to substantiated allegations of fraud and abuse including but not limited to suspending or terminating the provider from participation in the Department's programs, withholding payments or seeking recovery of payments made to the provider, or imposing other sanctions provided under state law or regulations. Such actions by the Department may be reported to CMS or other federal or state entities as appropriate.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08; DHSD 11-2008, f. 12-26-08, cert. ef. 12-27-08

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**Rule Caption:** MMIS Emergent Alternative Communication Process and Procedures.

**Adm. Order No.:** DHSD 1-2009(Temp)

**Filed with Sec. of State:** 1-12-2009

**Certified to be Effective:** 1-12-09 thru 7-10-09

**Notice Publication Date:**

**Rules Adopted:** 407-120-0400

**Subject:** The Department-wide provider rules (OAR 407-120-0300 to 407-120-0380) govern provider enrollment and claiming using the Medicaid Management Information System (MMIS). The Department is temporarily adopting OAR 407-120-0400 in concert with the newly adopted Division of Medical Assistance Programs' rule, OAR 410-120-0027, to ensure that Oregon Health Plan clients will be able to receive consistent and uninterrupted service and that providers are assured their correct and appropriate reimbursement during episodes of MMIS error or malfunction.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-120-0400

#### MMIS Replacement Communication Plan

(1) The purpose of this rule is to describe the Department's plan for communicating instructions and guidance related to the Department's implementation of the replacement MMIS that began on December 9, 2008. System issues are anticipated to be identified for a period of time during and after implementation. This rule is adopted to be effective retroactively to December 9, 2008 for the purpose of providing continuity of all MMIS communication efforts throughout the transition implementation process and regular operations following the transition. By adopting this communication plan in rule, the Department seeks to assure that eligible Department clients receive all necessary and appropriate services, and that Department providers and PHPs are correctly reimbursed for covered services provided to eligible clients.

(2) To the extent necessary to accomplish the purposes of this rule, the Department shall provide guidance and instructions related to MMIS for providers and PHPs using its web site and MMIS provider announcements.

(a) In cases of limitations or system errors in the replacement MMIS, the Department shall provide update information and important action required in concert with, or in place of, normal established procedures.

(b) In other cases, the Department shall provide instructions and guidance about the use of revised or improved functionality that is available through the replacement MMIS, such as the use of the web portal.

(3) Providers and PHPs must follow all applicable instructions given on the Department's web page and any provider announcements for the dates specifically noted in the communications, or if a date is not specified, until further instructions are provided. Department web site information and links to specific topics may be accessed at: [http://www.oregon.gov/DHS/healthplan/tools\\_prov/main.shtml](http://www.oregon.gov/DHS/healthplan/tools_prov/main.shtml).

(4) This rule does not amend existing rules or contracts that require providers or PHPs to confirm eligibility, respond to requests for prior

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authorization, submit claims or encounter data, or comply with any other rule or contract that imposes obligations on a provider or PHP as a condition of receiving reimbursement for services. This rule is intended to provide assurance to providers and PHPs that the MMIS-related processes for meeting those obligations are being addressed by the Department by providing guidance and instruction related to the provider's or PHP's interface with MMIS processes, and by identifying the resources providers and PHPs may use to obtain information during this time of transition to the replacement MMIS and during regular MMIS operations.

(5) The Department shall work with providers and PHPs by providing instructions and guidance to assure that service delivery and reimbursement disruptions related to transition to the replacement MMIS are minimized. Providers and PHPs must appropriately document all eligibility, services, authorization, claims, and payment information during the transition time, and their efforts to comply with instructions and guidance provided by the Department, so that reimbursement may be correctly provided.

(6) Providers and PHPs must immediately communicate to the Department any issues they encounter that are not addressed in the Department's instructions or guidance in seeking eligibility information or activities related to reimbursement for services through MMIS, errors discovered in the correct amount of any reimbursement received for those services, or in applying the instruction or guidance to resolve an issue.

(7) After the transition period is complete, the Department shall continue to implement this communication plan as long as necessary during regular MMIS operations in order to assist providers and PHPs with technical and system requirements of the replacement MMIS.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 1-2009(Temp), f. & cert. ef. 1-12-09 thru 7-10-09

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### Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs Chapter 461

**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 25-2008(Temp)

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09 thru 6-30-09

**Notice Publication Date:**

**Rules Amended:** 461-120-0125, 461-135-1250, 461-160-0550, 461-160-0551

**Subject:** OAR 461-120-0125 about the alien status requirements for all Self Sufficiency programs except Refugee and Refugee Medical is being amended to extend the eligibility date for Food Stamp (SNAP) benefits for Afghani Special Immigrants from September 30, 2008 until September 30, 2009. This change is retroactive.

OAR 461-135-1250 is being amended to provide that effective February 1, 2009 the monthly Post-TANF benefit amount will be \$100.00 (reduced from \$150.00). This rule is also being amended to state that a client is no longer eligible for Post-TANF benefits when the client does not meet federal JOBS participation requirements due to loss of employment, reduced work hours and the client chooses not to participate in required JOBS activities, or reduced JOBS activity hours without good cause that when combined with work hours does not meet the federal JOBS participation requirements.

OAR 461-160-0550 about income deductions for Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) clients in the community when no children are in the household group is being amended to reflect the annual adjustment in the countable income of the ineligible spouse based on the annual change in federal SSI program standards. The countable income standard is used in determining adjusted income.

OAR 461-160-0551 about income deductions for Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) clients in the community when children are in the household group is being amended to remove language that requires the rule to be updated and changed every year when federal SSI program standards change.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

#### 461-120-0125

##### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(e) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(f) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(4) In the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996,



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and the date qualified-noncitizen status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is an individual granted any of the following alien statuses:

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(d) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(e) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(f) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(g) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(7) In all programs except ERDC and TANF, a qualified non citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. ‘ 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (3)(e), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

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(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statusesC

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the eight month limit has not been reached.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2009, even if the six month limit has not been reached.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a *disability*, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means tested benefit during the quarter. Federal means tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage,

may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09

## 461-135-1250

### Specific Requirements: Post-TANF Program

(1) This rule explains specific requirements for the Post-TANF program. Through January 31, 2009, the Post-TANF program provides \$150 per month per qualifying adult in aid for 12 consecutive months or until the household income exceeds 250 percent of the Federal Poverty Level (FPL), whichever comes first, as long as the client meets federally required JOBS participation rates in combined unsubsidized paid work and JOBS activities.

(2) Effective February 1, 2009, the Post-TANF program provides \$100 per month per qualifying adult in aid for 12 consecutive months or until the household income exceeds 250 percent of the Federal Poverty Level (FPL), whichever comes first, as long as the client meets federally required JOBS participation rates in combined unsubsidized paid work and JOBS activities.

(3) To enroll in the Post-TANF program, a client must:

(a) Have obtained unsubsidized paid employment;

(b) Have become ineligible for the Pre-TANF, TANF or SFPSS programs due to earnings; and

(c) Be a Work Eligible Individual as defined by federal regulations.

(4) To remain eligible for the monthly Post-TANF payment, the client must meet the requirements of all of the following subsections:

(a) Meet all TANF eligibility requirements, except the client need not meet the following requirements:

(A) OAR 461-120-0310 and 461-120-0340 (child support assignment and cooperation);

(B) OAR 461-120-0330 (pursuing assets);

(C) OAR 461-125-0010 (deprivation);

(D) OAR 461-155-0030 (income limits); and

(E) OAR 461-160-0015 (resource limits).

(b) Report and meet the monthly JOBS federal participation requirements with unsubsidized paid work and, if necessary, other JOBS activities.

(c) Provide the Department with employer-produced documents of paid, unsubsidized work hours within 45 days after Pre-TANF, TANF, or SFPSS has ended.

(d) The client must also provide employer-produced documents of paid, unsubsidized work hours each time requested by the Department or no later than the last day of the sixth month following the date the client provides the verification of work hours in accordance with subsection (c) of this section.

(e) Report all changes in residency and *household* (see OAR 461-110-0210) group affecting Post-TANF eligibility within 10 days of the occurrence.

(f) Changes reported for another program that affect Post-TANF eligibility are considered reported for Post-TANF.

(5) A client failing to comply with subsection (3)(c) of this rule but then providing documents after 45 days is eligible for Post-TANF payments

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only in the month the local Department office receives the documents and the months thereafter.

(6) *Household* income for the Post-TANF program is calculated in accordance with all TANF financial rules.

(7) Each *parent* (see OAR 461-001-0000) of a two-parent family is entitled to a monthly Post-TANF payment if both parents meet all Post-TANF enrollment and eligibility requirements.

(8) Monthly payments in the Post-TANF program begin the month after the last regular TANF benefit payment; or for Pre-TANF clients, the month after the Department verifies that the client meets TANF eligibility requirements.

(9) A client in the Post-TANF program is entitled to support services in accordance with OAR 461-190-0241. Additional support services may be granted with manager approval.

(10) A client is no longer eligible for a Post-TANF payment when the client does not meet JOBS federal participation requirements due to:

(a) Loss of employment;

(b) A reduction in work hours, and the client chooses not to participate in required JOBS activities; or

(c) A reduction in JOBS activity hours without good cause (see OAR 461-130-0327) that when combined with work hours does not meet the JOBS federal participation requirements.

Stat. Auth.: ORS 411.060, 411.070, 412.006, 412.049 & 412.124

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.009, 412.049, & 412.124

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09

### 461-160-0550

#### Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are No Children in the Household Group

(1) For purposes of this rule:

(a) *Ineligible* person means an individual who is not eligible to receive either SSI or TANF benefits.

(b) *Child* means a natural or adopted child of an individual or a natural or adopted child of either member of a married couple.

(2) This rule is used to determine *adjusted income* (see OAR 461-001-0000) for all clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive Title XIX waived services; and

(d) Have no *children* in the *household group* (see OAR 461-110-0210).

(3) To determine *adjusted income* for clients described in section (2) of this rule, deductions from the *countable* (see OAR 461-001-0000) income of the *financial group* (see 461-110-0530) are made in the following order:

(a) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(b) One standard earned income deduction of:

(A) \$65 for OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA clients who are not blind; or

(B) \$85 for OSIP-AB and OSIPM-AB clients who are blind.

(c) An income deduction for documented impairment-related work expenses or blind work expenses.

(d) One half of the remaining earned income.

(e) Deductions under a plan for self-support.

(4) If the applicant has an *ineligible* spouse, he or she must first be financially eligible as an individual. Compare the adjusted income of the applicant (using the deductions in section (3) of this rule) to the one-person non-SSI OSIP and OSIPM adjusted income standard. If the applicant is over the one person standard, the applicant is financially ineligible. If the adjusted income of the applicant is less than the one person standard and the countable income of the ineligible spouse is:

(a) Greater than \$337, then combine the countable income of the applicant and the *ineligible* spouse, and take the deductions as described in section (3) of this rule and compare the resulting adjusted income to the two-person non-SSI OSIP and OSIPM adjusted income standard. If the resulting adjusted income is equal to or greater than the two-person non-SSI OSIP and OSIPM adjusted income standard, then the applicant is not financially eligible.

(b) Equal to or less than \$337, consider the income of the applicant only. As previously calculated in this section, the adjusted income of the

applicant is less than the one-person non-SSI OSIP and OSIPM adjusted income standard and so the applicant is financially eligible as an individual.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09

### 461-160-0551

#### Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

(1) For purposes of this rule:

(a) *Ineligible* person means an individual who is not eligible to receive either SSI or TANF benefits.

(b) *Child* means a natural or adopted child of an individual or a natural or adopted child of either member of a married couple.

(2) This rule is used to determine *adjusted income* (see OAR 461-001-0000) for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive Title XIX waived services; and

(d) Have *children* in the *household group* (see OAR 461-110-0210).

(3) To determine *adjusted income* for clients described in section (2) of this rule, deductions from the *countable* (see OAR 461-001-0000) income of the *financial group* (see 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, the applicant must first be financially eligible as an individual. Compare the applicant's adjusted income (using the deductions in subsections (b) through (f) of this section) to the one-person non-SSI OSIP and OSIPM adjusted income standard. If the adjusted income of the applicant is greater than the one person standard, the applicant is financially ineligible. If the applicant is financially eligible as an individual, income is allocated (see paragraph (C) of this subsection) from an ineligible spouse of the client to each *ineligible child* of the couple. If the remaining *countable* income of the *ineligible* spouse is equal to or less than the difference between the SSI Standard for a couple and the SSI Standard for an individual, there is no deeming to the applicant. As calculated above, the individual is under the one-person non-SSI OSIP and OSIPM adjusted income standard.

(B) When a *child* is applying:

(i) Income from *ineligible* parents is first allocated to each *ineligible child* in the household.

(ii) Second, the remaining income from subparagraph (i) of this paragraph is reduced as provided in subsections (b) through (f) of this section.

(iii) Third, the remaining income is reduced by the non-SSI OSIP and OSIPM adjusted income standard of the:

(I) Couple if both parents live with the *child*; or

(II) Individual if only one *ineligible* parent lives with the *child*.

(iv) Fourth, the remainder is deemed equally to each *child* applicant in the *household*.

(v) The income deemed to the child is added to the other income of the *child* and deductions are taken as described in subsections (b) through (f) of this section to calculate the child's adjusted income.

(C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other *countable* income of each *ineligible child*.

(b) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(c) One standard earned income deduction of:

(A) \$65 for clients in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or

(B) \$85 for clients in the OSIP-AB and OSIPM-AB programs.

(d) An income deduction for documented impairment-related work expenses or blind work expenses.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stat. Auth.: ORS 411.060, 411.070, 414.042



## ADMINISTRATIVE RULES

Stats. Implemented: ORS 411.060, 411.070, 414.042  
Hist.: SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09

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**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 26-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 461-155-0700, 461-155-0710

**Rules Amended:** 461-001-0000, 461-001-0025, 461-101-0010, 461-110-0330, 461-110-0350, 461-115-0050, 461-115-0530, 461-130-0335, 461-135-0010, 461-135-0075, 461-135-0085, 461-135-0089, 461-135-0730, 461-135-0745, 461-135-0780, 461-135-0832, 461-135-1102, 461-135-1195, 461-145-0380, 461-145-0540, 461-145-0820, 461-145-0830, 461-150-0049, 461-150-0050, 461-155-0250, 461-155-0270, 461-155-0295, 461-155-0300, 461-155-0320, 461-155-0500, 461-155-0526, 461-155-0600, 461-155-0610, 461-160-0100, 461-160-0410, 461-160-0580, 461-160-0620, 461-165-0030, 461-170-0010, 461-170-0100, 461-170-0101, 461-170-0102, 461-170-0120, 461-170-0150, 461-170-0160, 461-170-0200, 461-175-0220, 461-175-0240, 461-175-0270, 461-175-0280, 461-175-0305, 461-180-0005, 461-180-0090, 461-180-0125

**Rules Repealed:** 461-135-0075(T), 461-145-0840, 461-150-0048, 461-155-0500(T), 461-155-0526(T), 461-155-0600(T), 461-155-0610(T), 461-155-0700(T), 461-155-0710(T), 461-170-0170

**Rules Ren. & Amend:** 461-170-0015 to 461-170-0011, 461-170-0020 to 461-170-0011, 461-170-0025 to 461-170-0011, 461-170-0030 to 461-170-0011, 461-170-0035 to 461-170-0011

**Subject:** OAR 461-001-0000 about definitions for the Department's public assistance programs covered by OAR Chapter 461 is being amended to change the description of the Independent Choices In-Home Services program within the definition of "community based care". This amendment eliminates language that refers to the Independent Choices Program as a demonstration project undertaken as part of the state's federal waiver. This amendment also changes the description of the purpose of cash benefits in this program. Additionally, this rule is being amended to change the definition of "initial month" for disqualifying transfers (for clients in nonstandard living arrangements in the GA, GAM, OSIP, and OSIPM programs) by stating that it applies to applicants.

OAR 461-001-0025 about the definitions of terms, components, and activities in the JOBS, Pre-TANF, Post-TANF, and TANF programs is being amended to state the definition of Parents as Scholars (PAS) and remove cross-references of the Degree Completion Initiative (DCI) components of the JOBS programs.

OAR 461-101-0010, 461-135-0730, 461-155-0295, and 461-180-0090 are being amended to state what the Qualified Medical Beneficiaries - Basic (QMB-BAS) program pays for, state the acronym for and provide an overview of the Qualified Medicare Beneficiaries - Individuals (QMB-SMF) program, state the specific requirements for the QMB-SMB and QMB-SMF programs, state the income standards for the QMB-SMF program, and state the initial month for benefits under the QMB-SMF program. OAR 461-101-0010 is the Department's acronym and overview rule. This rule is being amended to clarify the overview of the various programs included under the Qualified Medical Beneficiaries (QMB) program and to indicate that all of these programs are considered to be Medicare Savings Programs (MSP). This rule also is being amended to state that the QMB-BAS program pays for Part A and Part B Medicare premiums. Also, this rule is being amended to provide an overview of the QMB-SMF program. OAR 461-135-0730 about the specific requirements for the QMB program is being amended to restate the requirements for the QMB-SMB program and state the requirements for the QMB-SMF program. OAR 461-155-0295 about the income standards for the QMB-SMB and QMB-SMF programs is being amended so the title indicates the rule applies to the QMB-SMF program and correctly label the income standard for QMB-SMF. OAR 461-180-0090 about

the effective date of initial month for medical benefits is being amended to state that the effective date of the initial month for QMB-SMF benefits is the first of the month in which the benefit group meets all program eligibility criteria and the Department receives the required verification.

OAR 461-110-0330 about the Extended Medical (EXT), Medical Assistance Assumed (MAA), and Temporary Assistance to Need Families (TANF) filing group used for the eligibility determination process is being amended to state that children who are receiving guardianship assistance from the Children, Adults and Families Office of Safety and Permanency for Children, may not be part of an EXT, MAA or TANF filing group.

OAR 461-110-0350 about filing groups in the Employment Related Day Care (ERDC) program is being amended to state that the filing group consists of certain applicants and household group members, even if they do not meet nonfinancial eligibility requirements, and clarify that a day care provider in the filing group for the ERDC program can also be the caretaker of a child if they are providing care for the child of an individual who is a member of an armed forces reserve unit or a member of the National Guard and has been called to active duty away from the child's home for more than 30 days. Also, this rule is being amended to state that an unmarried child and any sibling, under the age of 19 and attending secondary school or vocational training at least half time, is part of the filing group. This rule also is being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice.

OAR 461-115-0050 about when to file an application for the programs in OAR Chapter 461 is being amended to state that a new application is not needed for a redetermination of eligibility for clients in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs or if these clients want to change programs when they are currently receiving benefits and the Department has enough information to make a determination without a new application.

OAR 461-115-0530 is being amended to provide children who are eligible for the Oregon Health Plan (OHP) with household income below 100 percent of the Federal Poverty Level (FPL), and children under age six with household income below 133 percent of the FPL with a 12 month eligibility period.

OAR 461-130-0335 is being amended to clarify that the client cooperation period necessary for the removal of a JOBS disqualification from benefits in the Temporary Assistance for Needy Families (TANF) and Refugee Assistance (REF) programs is two consecutive weeks rather than the vaguer "two weeks".

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to state that a pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid.

OAR 461-135-0075 about limitations on Temporary Assistance for Needy Families (TANF) program eligibility periods is being amended to state the new time limit exemption for clients participating in the Parents as Scholars (PAS) component of the JOBS program that is replacing the Degree Completion Initiative (DCI) component of the JOBS program. This rule also is being amended to state the program will allow an exemption due to caring for a family member who has a disability, is living in the home, and is attending school full-time. This rule is being amended to make permanent a temporary rule amended October 1, 2008.

OAR 461-135-0085 about the requirements for individuals served by the Temporary Assistance for Needy Families (TANF) and Pre-TANF programs to seek assessment for substance abuse and seek appropriate treatment for substance abuse or mental health conditions is being amended to state more clearly the requirements for when a client must seek assessment or treatment for substance abuse and mental health conditions, and what type of assessment and treatment

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the client must pursue. The rule also is being amended to eliminate the requirement for a mental health assessment if the client has recently been diagnosed with a mental health condition. Also, this rule is being amended to state that the client must participate in mental health treatment if a mental health diagnosis recently has been made and treatment is required for success in the workplace. This rule also is being amended to restate the penalties to the client for failing to comply with the requirements of this rule. This rule is also being amended so it no longer applies to clients in the State Family Pre-SSI/SSDI (SFPSS) program.

OAR 461-135-0089 is being amended to state how an eligibility disqualification due to noncompliance with required substance abuse treatment in the Refugee (REF), Temporary Assistance for Needy Families (TANF), or Pre-TANF programs may be ended and benefits restored. This amendment clarifies that a client must demonstrate compliance with a cooperation period of two consecutive weeks and complete a revised or new case plan to get benefits restored. This rule also is being amended to distinguish between clients who express a willingness to cooperate with program requirements before the effective date of a proposed disqualification and clients who express this willingness only on or after a disqualification period begins. Also, this rule is being amended to remove language regarding four levels of penalties because now a client is either eligible to continue receiving benefits or disqualified from receiving benefits. This rule also is being amended to remove the requirement for SFPSS program clients to undergo an evaluation or participate in treatment to end the disqualification penalty.

OAR 461-135-0745 about OSIPM program eligibility for clients in acute care hospitals or nursing facilities is being amended to clarify that one of the requirements for program eligibility is to meet the continuous period of care provision.

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program, OAR 461-155-0250 about income and payment standards for OSIP and OSIPM programs, OAR 461-155-0270 about the payment standard for OSIP and OSIPM clients in non-standard living arrangements, OAR 461-155-0300 about the shelter-in-kind standard for the OSIP, OSIPM, and QMB programs, and OAR 461-160-0580 about the excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD and OSIPM-EPD are being amended to adjust these standards to reflect the annual federal cost of living adjustments which will be effective January 1, 2009.

OAR 461-135-0832 about the definitions used in the Estate Administration rules (OAR 461-135-0832 to 461-135-0847) is being amended to correctly cross-reference the relevant administrative rules and Oregon statutes. This rule also is being amended to restate the definition of “assets” and “real property”, and define “interspousal transfer”.

OAR 461-135-1102 about the Oregon Health Plan - Adults (OHP-OPU, usually referred to as OHP Standard) effective date policy is being amended to state that a client is not considered a new OHP Standard applicant even though not continuously eligible for OHP Standard, when transitioning from child welfare medical, Breast and Cervical Cancer Medical (BCCM), Extended Medical (EXT), OHP, Refugee Medical (REFM), or Temporary Assistance for Needy Families (TANF) related medical (MAA, MAF), or related CAWEM programs. This rule also is being amended to clarify that to be considered for the OHP Standard program, clients transitioning from child welfare, BCCM, EXT, OHP, or TANF related medical or related CAWEM programs must both establish a date of request per OAR 461-135-0300 prior to the end date of their current child welfare, BCCM, EXT, OHP, or TANF related medical or related CAWEM programs’ end date and must also meet OHP Standard eligibility requirements within the 45 day application processing timeframe per OAR 461-115-0190.

OAR 461-135-1195 about State Family Pre-SSI/SSDI (SFPSS) eligibility requirements is being amended to state that the Temporary Assistance to Needy Families (TANF) income standard is used to

determine eligibility for the SFPSS program and the SFPSS payment standard is used to determine the benefit amount received under SFPSS. This rule also is being amended to clarify that in filing groups with only one adult, when that adult is applying for Supplemental Security Income (SSI) and a child is receiving SSI, the filing group is ineligible for SFPSS benefits. Also, this rule is being amended to clarify that a client may continue to receive SFPSS benefits, even if denied SSI benefits, until all Social Security administrative appeals are exhausted.

OAR 461-145-0380 is about pension plans and how they are treated in the Department’s public assistance, medical, and Food Stamp (supplemental nutrition assistance) programs. This rule is being amended to correct in a typo in the current rule and add additional excluded pension plans according to a revised list from the federal Food and Nutrition Service for the Food Stamp program.

OAR 461-145-0540 related to the treatment of trusts is being amended for clients in the Oregon Supplemental Income Program Medical program (OSIPM) receiving long-term care services who need a trust to be income-eligible for Medicaid. The amount which trustees of pooled trusts may retain, upon the death of a client who is the beneficiary of a pooled trust or the termination of the trust, before paying the state an amount equal to the total medical assistance paid on behalf of the beneficiary, is being amended to provide that the amount paid to the state can be reduced only by those administrative costs directly related to administering the beneficiary’s sub-trust account.

OAR 461-145-0820 about deeming the assets of the sponsor of a noncitizen to the noncitizen applicant for Department program benefits and OAR 461-145-0830 about when to deem the assets of a sponsor of a noncitizen to the noncitizen are being amended, and OAR 461-145-0840 about calculating income deemed from sponsor of a noncitizen to the noncitizen is being repealed and combined into OAR 461-145-0830 to restate more clearly the Department’s policy on deeming a sponsor’s assets to a noncitizen. OAR 461-145-0820 is being amended to state that in all Department programs except the Food Stamp (FS) program the countable value of the resources deemed available to each noncitizen is determined according to the rules of the program(s) for which the sponsored non-citizen applied. OAR 461-145-0830 is being amended to state that deeming does not apply to the REF and REFM programs, the guidelines for how a sponsored noncitizen establishes indigence under various Department programs, the process used to determine the amount of income considered available to the noncitizen from the non-citizen’s sponsor and the spouse of the sponsor, and how to calculate the income deemed available to sponsored noncitizen. OAR 461-145-0840 is being repealed and combined into OAR 461-145-0830 to incorporate its provisions into the revised OAR 461-145-0830.

OAR 461-150-0048 about eligibility and budgeting, and defining prospective eligibility and budgeting, in the Employment Related Day Care (ERDC) program is being repealed and combined into OAR 461-150-0049 to incorporate its provisions into the amended OAR 461-150-0049.

OAR 461-150-0049 about budgeting income for cases using anticipating with periodic review (APR) in the Employment Related Day Care (ERDC) program is being amended to re-title it to correctly reflect the objective of the rule. This rule also is being amended to clarify that the Department may use prospective budgeting when calculating income for ERDC and eliminate the requirement to use two prior months income. Also, this rule is being amended to state the methods for calculating annualized, educational, temporary, ongoing stable, and ongoing variable income, and the cross-reference OAR for each method.

OAR 461-150-0050 about the use of prospective and retrospective eligibility and budgeting in the GA, OSIP, OSIPM, and QMB programs is being amended to state that the OSIP-EPD and OSIPM-EPD programs use prospective eligibility and budgeting for

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unearned income, stable earned income, and varying earned income.

OAR 461-155-0320 about the payment standards for participants in the Department's State Family Pre-SSI/SSDI (SFPSS) program is being amended to change the payment standards.

OAR 461-155-0500, 461-155-0526, 461-155-0600, and 461-155-0610 are being amended and OAR 461-155-0700 and 461-155-0710 are being adopted to support placement of Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM - serving the elderly and people with disabilities) clients who need long-term care services in their homes or in community-based care facilities rather than in nursing facilities. These rules relate to special needs payments for OSIP and OSIPM clients for these purposes. OAR 461-155-0500 is an overview rule about special needs payments in the General Assistance (GA), General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs. This rule is being amended to authorize personal incidentals and room and board allowances for ongoing special needs payments, authorize one-time payments to support diversion and transition from nursing facility placements, and add cross-references to other rules and statutes and follow standard formatting. This rule is being amended to make the changes in the temporary rule permanent. OAR 461-155-0526 is about special needs payments for community transition services in the OSIP and OSIPM programs. This rule is being amended to limit special needs payments to assisted-living facilities to items the facility is not required by law, another OAR, or contract to provide. This rule also is being amended to state that special needs payments are authorized for moving belongings and climate control systems, but not for lift chairs. This rule is being amended to make the changes in the temporary rule permanent. OAR 461-155-0600 is about special needs payments for home repairs in the GA, OSIP, and OSIPM programs. This rule is being amended to state the Department's policy for approval of special needs payments for home repairs, including that payments are limited in cases of joint ownership and more than one home repair payment can be made in the 24-month period to reach the \$1,000 maximum payment amount. This rule is being amended to make the changes in the temporary rule permanent. OAR 461-155-0610 is about special needs payments for moving costs in the GA, OSIP and OSIPM programs. This rule is being amended to state the Department's policy regarding special needs payments for moving costs in the GA, OSIP and OSIPM programs. This rule is being amended to allow for special needs payment for moving expenses when a client in a nonstandard living arrangement must move because his or her level of care needs increase or decrease and to allow for special needs payment for moving expenses when the client must move because his or her care needs would be better met out of state. This rule also is being amended with clarifications that will help field staff understand the rule. This rule also is being amended to increase the maximum amount of moving expense special needs payments that may be authorized for a client from \$300 to \$500. This rule is being amended to make the changes in the temporary rule permanent. OAR 461-155-0700 is about special needs payments for personal incidentals and room and board allowance in the OSIP and OSIPM programs. This rule is being adopted to state the Department's policy for allowing special needs payments for a client's personal incidentals and room and board costs in a community-based care facility, for a client who lacks the income to make the payment, and if the client would be placed in a nursing facility without the payment. This rule is being adopted to make the temporary rule permanent. OAR 461-155-0710 is about special needs payments for Diversion and Transition Services for an individual in the OSIP and OSIPM programs moving from a nursing facility or to avoid placement in a nursing facility and to support placement instead in community-based care.

This rule is being adopted to state the Department's policy for allowing one-time special needs payments for diversion or transition. Payments will be authorized at the lowest possible cost, must be authorized by Seniors and People with Disabilities Division central office staff, cannot be covered by any other medical coverage or Department program, or if they must be provided by the facility by statute, OAR, or contract. This rule is being adopted to make the temporary rule permanent.

OAR 461-160-0100 about how income affects eligibility and benefits in the MAA, MAF, REF, SAC, SFPSS, and TANF programs is being amended to state that these programs use the countable and adjusted income standards from OAR 461-155-0030 in determining eligibility. This rule also is being amended to state the State Family Pre-SSI/SSDI (SFPSS) program is included in the programs using the countable and adjusted income standards from OAR 461-155-0030 when determining eligibility and benefits.

OAR 461-160-0410 about the treatment of income and income deductions in the Food Stamp (FS) program when a group includes ineligible or disqualified members is being amended to correctly restate the Department's policy on the treatment of TANF grant income. This amendment directs that TANF grant income is always prorated when an ineligible non-citizen is in the FS filing group. A filing group is composed of individuals living together who customarily purchase and prepare meals together.

OAR 461-160-0580 about excluded resources, specifically the community spouse provision in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs, except OSIP-EPD and OSIPM-EPD, is also being amended to allow the Department to waive the requirements about court-ordered community spouse resource allowances if the Department determines a denial of benefits creates an undue hardship on the client. This rule also is being amended to reflect the 2009 cost-of-living increases mandated by the federal Department of Health and Human Services.

OAR 461-160-0620 related to the liability calculation for clients in the Oregon Supplemental Income Program Medical (OSIPM, assistance to seniors and people with disabilities) receiving long-term care services is being amended to reflect the annual federal increase to the maximum maintenance need standard that is used to calculate how much of the client's income can be diverted to the community spouse.

OAR 461-165-0030 is being amended to clarify that Department benefits of the same type (cash, medical, or food stamps) can be issued to an individual who is a member of two or more benefit groups or participates in two or more separate programs during the same month, just not for the same portions of the same month. This rule is also being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice.

OAR 461-170-0010 is being amended to provide an overview of the change reporting requirements for clients in all of the Department's public assistance programs. The amended rule states that clients are assigned an appropriate reporting system based on the programs in which they participate: Anticipating with Periodic Review (APR), Change Reporting System (CRS), Monthly Reporting System (MRS), Simplified Reporting System (SRS), or Transitional Benefit Alternative (TBA). In addition this rule is being amended to reflect a change from "Averaging with Periodic Review" to "Anticipating with Periodic Review". Additionally, this rule needs to be amended to add CRS and state the change reporting requirements for clients assigned to CRS. This rule also is being amended to include clients assigned to TBA and state they are not required to report any changes. This rule also is being amended to correct cross-references to other OAR that have been renumbered, amended, or adopted.

OAR 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, and 461-170-0035 are being amended and renumbered to OAR 461-170-0011 to consolidate and state the change reporting requirements in a single rule for Department clients in the Breast and Cer-



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vical Cancer Medical (BCCM), Employment-Related Day Care (ERDC), Extended Medical Benefits (EXT), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medicare Beneficiary (QMB), Refugee Assistance (REF), Refugee Assistance Medical (REFM), State Family Pre-SSI / SSD (SFPSS), Substitute or Adoptive Care Medical Coverage (SAC), Temporary Assistance to Needy Families (TANF), and Transitional Benefit Alternative (TBA) programs. The new rule also defines the meaning of the terms “change in employment status” and “change in source of income”. The new rule covers the following change reporting requirements for FS clients assigned to: the Change Reporting System (CRS) clients are to report changes as listed, the Monthly Reporting System (MRS) clients are to report changes as listed, as well as those required by MRS. The new rule requires clients in the GA, GAM, OSIP, OSIPM, and QMB programs who are also subject to the MRS to report changes as required by MRS. The new rule adds requirements for MAA, MAF, SAC, SFPSS, and TANF clients assigned to the CRS and states the change reporting requirements for CRS. The new rule changes the change reporting requirements for MAA, REF, SFPSS, and TANF clients assigned to the MRS, clients are also to report changes as required by MRS. The new rule now requires OSIP-EPD and OSIPM-EPD program clients to report changes in health care coverage, household group, marital status and resources. The new rule clarifies that REFM clients no longer have to report changes in pregnancy status. The new rule will allow a participant in a Department program to more readily locate the change reporting requirements for that program. OAR 461-170-0015 is being amended and renumbered to OAR 461-170-0011 to incorporate its requirements for clients in the ERDC program to report certain changes into the new OAR 461-170-0011. OAR 461-170-0020 is being amended and renumbered to OAR 461-170-0011 to incorporate its requirements for clients in the FS, MAA, MAF, REF, REFM, SFPSS, and TANF programs to report certain changes into the new OAR 461-170-0011. OAR 461-170-0025 is being amended and renumbered to OAR 461-170-0011 to incorporate its requirements for clients in the EXT program to report certain changes into the new OAR 461-170-0011. OAR 461-170-0030 is being amended and renumbered to OAR 461-170-0011 to incorporate its requirements for clients in the GA, GAM, OSIP, OSIPM, and QMB programs to report certain changes into the new OAR 461-170-0011. OAR 461-170-0035 is being amended and renumbered to OAR 461-170-0011 to incorporate its requirements for clients in the OHP program to report certain changes into the new OAR 461-170-0011.

OAR 461-170-0100 about the Department’s Monthly Reporting System (MRS) is being amended to remove the Refugee Assistance Medical program (REFM) from the requirement to be assigned to the MRS. This rule also is being amended to state that a Medical Assistance to Families (MAF) filing group could be assigned to the MRS due to the requirements of another program.

OAR 461-170-0101 about the simplified reporting system (SRS) in the Food Stamp program is being amended to clarify that clients certified to receive benefits for less than six months cannot participate in the SRS, simplify language, and allow for rule consistency between Department programs. This rule also is being amended to add a cross reference to clarify what is meant by the term filing group in this rule.

OAR 461-170-0102 about the required Interim Change Report for the simplified reporting system in the Food Stamp program is being amended to add cross references to defined terms in the rule and to make grammatical changes.

OAR 461-170-0120 about what happens when a Monthly Change Report (MCR) is incomplete or not received by the Department is being amended to clarify that if a MCR is not received by the last day of the payment month, in all programs except the Food Stamp (FS) program, the case is closed effective the last day

of the budget month. This rule is also being amended to cross reference the definition for the term “budget month”.

OAR 461-170-0150 about the length of the Averaging with Periodic Review (APR) period in the Employment Related Day Care (ERDC) program is being renamed to correctly state APR as Anticipating with Periodic Review. This rule is also being amended to restate clearly the Department’s policy that all participants in the ERDC program must use APR. In addition, this rule is being amended to clarify that when a client reports an income change, the Department may recalculate the anticipated future income of the client.

OAR 461-170-0160 about when a periodic review form is considered complete in the Employment Related Day Care (ERDC) program is being amended to cover what happens when a re-application is not received, and correctly restate the Department’s policy about a client’s responsibility to complete and return a re-application form within the deadline set by the Department. Also, this rule is being amended to replace references to periodic review form with re-application form. This rule also is being amended to state the purposes for which the Department uses the re-application form: determining eligibility for ERDC benefits, establishing ERDC benefit copy amounts, and establishing the next APR period. In addition, this rule is being amended to include information from former OAR 461-170-0170 regarding closing of an ERDC case when a completed periodic review form is not returned to the Department by the deadline and that a completed periodic review form returned after the deadline is treated as a new application for benefits.

OAR 461-170-0170 about the Department’s actions in the Employment Related Day Care (ERDC) program when a periodic review form is incomplete or not returned to the Department by the indicated deadline is being repealed and combined into OAR 461-170-0160 to incorporate its provisions into OAR 461-170-0160.

OAR 461-170-0200 about state and federal government initiated changes to benefits that clients are not required to report to the Department is being amended to clarify the rule language and include as changes that need not be reported the cost of living changes to the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), State Family Pre-SSI/SSDI (SFPSS), and Temporary Assistance to Needy Families (TANF) programs. This rule is also being amended to update a reference to the Aid to Dependent Children (ADC) program, which was renamed the TANF program.

OAR 461-175-0220, 461-175-0240, 461-175-0270, 461-175-0280, 461-175-0305, about the type of notice the Department is required to send a client when the client’s benefits change or are discontinued, and 461-180-0005 about effective dates when the Department acts on changes for clients assigned to the Anticipating with Periodic Review (APR) reporting system are being amended to remove references to the “Periodic Review” form and replace that term with “re-application” form. These rules are being amended because the Department is replacing the Periodic Review form with the re-application form.

OAR 461-180-0125 is about effective dates when reopening Food Stamp benefits after a benefit closure due to mail returned by the U.S. Post Office marked “undeliverable, no forwarding address.” This rule is being amended to include Employment Related Day Care (ERDC) and clarify that ERDC benefits can be reopened effective the first of the month if benefit closure reason was returned mail, and the client contacted the Department within the first calendar month following the case closure with a new mailing address.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-001-0000

#### Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other

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agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) means the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine *eligibility* and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means a *caretaker* who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the *dependent child*:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(20) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(21) "Department" means the Department of Human Services (DHS).

(22) "Dependent child", in the EXT, MAA, MAF, REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(23) "Disability" means:

(a) In the FS program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(24) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(25) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the

## ADMINISTRATIVE RULES

facility serves other people, a portion must be used solely for victims of domestic violence.

(26) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(27) "Equity value" means fair market value minus encumbrances.

(28) "Fair market value" means the amount an item is worth on the open market.

(29) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(30) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(31) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(32) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(33) "Income producing property" means any real or personal property that generates income for the financial group. Examples of income producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(34) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(e) For a new applicant to the GA, GAM, OSIP, or OSIPM program living in a nonstandard living arrangement, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(35) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(36) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(37) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(38) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(39) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(40) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings, and personal injury claims.

(41) "Marriage" means the union of a man and a woman who are legally married.

(42) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(43) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(44) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community based care (see section (16) of this rule) setting.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care facility.

(C) Drug or alcohol residential treatment facility.

(D) Homeless or domestic violence shelter.

(E) Lodging house if paying for room and board.

(F) Correctional facility.

(G) Medical institution.

(45) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(46) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control, and supervision of the child.

(47) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(48) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(49) "Periodic income" means income received on a regular basis less often than monthly.

(50) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.



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(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or client's spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative, or parent.

(51) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(52) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(53) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(54) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(55) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(56) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(57) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(58) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(59) "Spouse" means an individual who is legally married to another individual. In the ERDC and FS programs, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors, or tradespeople; and

(b) Sharing living expenses or household duties.

(60) "Stable income" means income that is the same amount each time it is received.

(61) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(62) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(63) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(64) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(65) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(66) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth: ORS 411.060, 411.070, 411.816, 412.006, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.014, 412.049, 414.042  
Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-001-0025

#### Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF

In the JOBS, Pre-TANF, Post-TANF, and TANF programs, the following definitions apply to rules in Chapter 461 unless the context indicates otherwise.

(1) Activity: An action or set of actions to be taken by the client, as specified in the case plan. An activity is intended to reduce barriers and:

(a) Increase the likelihood of self sufficiency, employment, job retention, wage enhancement, and financial independence; or

(b) Promote family stability (see OAR 461-001-0000).

(2) Adult Basic Education (ABE): An activity in the basic education component that involves remedial education coursework intended to ensure functional literacy.

(3) Assessment: An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS program, and which support services are needed. This activity includes providing screenings and evaluations (if appropriate) to determine the level of participation, accommodation, and modification for the client in the JOBS program. The screenings include but are not limited to physical and mental health needs, substance abuse, domestic violence, and learning needs.

(4) Barrier: A personal condition or circumstance that reduces the likelihood the client will become employed or the client's ability to participate in an activity listed in the case plan.

(5) Basic education: A component of non-core activities intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, job skills training, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(6) Case plan (formerly also known as an employment development plan (EDP), a personal plan, or personal development plan): A written outline, developed in partnership by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The case plan also identifies the support service payments, accommodations, and modifications to help the client complete the plan. The DHS 1543 – Domestic Violence Assistance Agreement – is the case plan for clients with safety concerns about domestic violence.

(7) Community Service Program: An activity in the unpaid employment component in which the client works without pay at a job site to enhance the likelihood the client will become employed and perform work for the direct benefit of the community. This activity is available through nonprofit organizations or public agencies.

(8) Component: A set of one or more activities of the JOBS program. Components of the JOBS program are paid unsubsidized employment, paid subsidized employment, unpaid employment, vocational training, job search and readiness, and basic education activities.

(9) Core activities: Federally-defined countable work activities that include: paid unsubsidized employment; paid subsidized employment; work experience; on-the-job training; job search and readiness; community service programs; vocational training; and providing child care assistance to a community service program participant.

(10) Degree Completion Initiative (DCI): An activity in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year educational institution.

(11) Drug and alcohol services: An activity in the job search and readiness component that provides substance abuse screenings and evaluations, outpatient or resident treatment, and support groups such as AA or NA.

(12) Employer contact: A client communication with an employer or employer's representative through a visit, phone call, or mail to request consideration for employment.

(13) English as a second language (ESL): An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(14) Fair Labor Standards Act (FLSA): Applies to subject employers with clients working in the unpaid employment component. FLSA requires that clients engaged in unpaid employment, in effect, cannot "work off" their TANF and Food Stamp benefits at an hourly rate less than the state minimum wage.

(15) Federally required participation rates: The participation rates required by section 407 of the Social Security Act (42 USC 607).

(16) High School or GED Completion Attendance: An activity in the basic education component that involves attendance at a secondary school or in a course of study that leads to the completion of the GED.

(17) Job search: An activity in the job search and readiness component that focuses on clients looking for and obtaining employment. It is

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designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. There are two categories of job search: initial job search and regular job search. Initial job search may occur during the Pre-TANF program. Regular job search begins not later than the day after the Department finds the client eligible for TANF benefits.

(18) Job search and readiness: A component designed to prepare clients to compete in the local labor market. Job search, life skills, drug and alcohol services, mental health services, and rehabilitation activities are the activities of the job search and readiness component.

(19) Job skills training: An activity in the basic education component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area.

(20) JOBS Plus program (JOBS Plus): An activity in the paid subsidized employment component that provides TANF clients with on the job training and pays their benefits as wages (see the rules at OAR 461-190-0401 to 461-190-0426).

(21) Life skills: An activity of the job search and readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(22) Mental health services: An activity in the job search and readiness component that provides mental health screenings and assessments, counseling, medication management, and support groups.

(23) Microenterprise: An activity in the paid unsubsidized employment component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(24) Non-core activities: Federally-defined countable work activities that include: job skills training directly related to employment; education directly related to employment; and satisfactory school attendance at a secondary level or leading to a GED.

(25) On-the-job training (OJT): An activity in the paid subsidized employment component in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(26) Paid subsidized employment: A component in which clients are employed in a subsidized public or private sector job. JOBS Plus, work supplementation, and on-the-job training are the activities in the paid subsidized employment component.

(27) Paid unsubsidized employment: A component in which clients are employed full- or part-time in an unsubsidized job and receiving TANF benefits. Unsubsidized employment is a job that is not subsidized by TANF or any other public program. The UN work program and microenterprise are the activities in the paid unsubsidized employment component.

(28) Parents as Scholars (PAS): A JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution (see OAR 461-190-0199).

(29) Program entry: An activity that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities include assessment and writing the initial case plan.

(30) Progress (good or satisfactory): For federal reporting purposes, a client participating in an education or training activity makes good progress or satisfactory progress by receiving a passing grade or progressing toward completion of high school or GED completion at no less than the normal rate of a half-time student.

(31) Providing child care services to a Community Service Program participant: An activity in the unpaid employment component.

(32) Rehabilitation activities: An activity in the job search and readiness component that provides medical or therapeutic screenings, assessments, and treatment. This activity also includes medical management and support groups.

(33) Sheltered or supported work: An activity in the unpaid employment component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(34) Stabilization, intervention, and other activities: A group of activities that are non-countable for federal participation purposes. These activities include child health and development, crisis intervention, domestic violence services, family stability activities (see OAR 461-001-0000), medical services, retention services, services to child welfare families, social security application, and stabilized living services.

(35) Support services: Services that case-managed clients need to participate successfully in activities outlined in their case plan, seek and maintain employment, or remove barriers.

(36) Teen parent: Custodial parent under age 20.

(37) Transition services: Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

(38) Unpaid employment: A component in which a client is placed in an unpaid job to develop good work habits, training and knowledge to obtain employment. Employment may be in the private or public sector or through a work simulation program. Work experience, Community Service Program, providing child care services to a Community Service Program participant, and sheltered or supported work are the activities of the unpaid employment component.

(39) UN work program: An activity in the paid unsubsidized employment component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(40) Vocational Training: An activity and component of the JOBS program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(41) Work experience: An activity in the unpaid employment component in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations, or public agencies.

(42) Work supplementation: An activity in the unpaid employment component. Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to \$200 per month to the employer.

Stat. Auth.: ORS 411.060, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 412.001, 412.006, 412.009, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; Renumbered from 461-190-0110, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-101-0010

#### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program (for instance, OSIP) and acronyms for each subprogram (for instance, OSIP-AB, OSIP-AD, and OSIP-OAA).

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone,

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ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program (see the Pre-TANF program in this rule).

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) DFSP; Disaster Food Stamp Program. Following a presidential declaration of a major disaster in Oregon, DFSP provides emergency food stamps to victims. OAR 461-135-0491 to 461-135-0497 cover DFSP eligibility and benefits.

(10) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(11) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(12) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food. Any reference to Food Stamps or FS also includes the Supplemental Nutrition Assistance Program or SNAP.

(13) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(14) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(15) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(16) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(17) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(18) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(19) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(20) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(21) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(22) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(23) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(24) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(25) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(26) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(27) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.



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(28) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(29) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(30) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(31) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(32) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(33) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(34) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(35) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(36) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-110-0330

### Filing Group; EXT, MAA, TANF

(1) In the EXT, MAA, and TANF programs, a filing group must include a dependent child or unborn child and the following household members (even if they are not applicants or do not meet nonfinancial eligibility requirements):

(a) Parents of the dependent children in the filing group.

(b) Parents of an unborn child in the filing group.

(c) Siblings of the dependent child, except as specified in subsection

(3)(a) of this rule. The siblings must be under the age of 18, or 18 years of age and attending school full time.

(d) For needy caretaker relatives of the dependent child, their spouse and their dependent children.

(e) Caretaker relatives.

(2) A dependent child is not included in the filing group if he or she has been or will be receiving foster care payments for more than 30 days, is receiving adoption assistance, or is receiving Title IV-E subsidized guardianship payments.

(3) The parents of a minor parent are not in the minor parent's filing group if:

(a) The minor parent does not live with his or her parent; or

(b) The parents of the minor parent are in the minor parent's household but are not applying for MAA or TANF for the minor parent or any of his or her siblings.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.049, 414.042, 418.005  
Stats. Implemented: ORS 411.060, 411.070, 412.049, 414.042, 418.005  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-110-0350

### Filing Group; ERDC

In the ERDC program:

(1) The *filing group* consists of the following applicants and household group members, even if they do not meet nonfinancial eligibility requirements:

(a) The *caretaker* (see OAR 461-001-0000) of the child for whom ERDC benefits are requested, except this does not apply to a child care provider caring for the child of an individual --

(A) Who is a member of a National Guard or U.S. Armed Forces Reserve unit; and

(B) Who has been called to active duty away from the child's home for more than 30 days.

(b) An unmarried child and any sibling, under age 18 or under the age of 19 and attending secondary school or vocational training at least half time, in the care and custody of the caretaker. A foster child is included if the caretaker wants to include the child in the need group (see OAR 461-001-0000).

(c) Any parent of a child required to be in the filing group.

(d) Any parent of an unborn, if the sibling of the unborn is required to be in the filing group.

(e) The *spouse* (see OAR 461-001-0000) of the caretaker.

(2) A minor parent may form a separate filing group with his or her dependent child or children when the minor parent applies as the caretaker.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. & cert. ef. 12-17-03 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-115-0050

### When an Application Must Be Filed

A client must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(1) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(2) In all programs other than the TA-DVS program:

(a) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(b) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for all individuals in the filing group.

(B) The applicant, even if homeless, provides a mailing address.

(C) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(D) The application is received by the Department.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), in accordance with OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date of request (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950.

(4) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

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(A) A new application is not required if the child is listed on the application as “unborn” and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as “unborn.”

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to the benefit group of the child’s mother. The child may be added to a benefit group other than the benefit group of the child’s mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

(d) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, and TANF, an application is required.

(5) Except for OHP-OPU applicants who must use the OHP 7210R Application (see OAR 461-135-1125), a new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:

(a) In the ERDC and FS programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF, a new application is required.

(6) A client whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except the EXT, FS, MAA, MAF, and OHP programs, a client may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes an oral or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) Except for OHP-OPU applicants who must use the OHP 7210R Application (see OAR 461-135-1125), a new application is not required in the EXT, MAA, MAF, OHP, OSIP, OSIPM, and QMB programs to redetermine eligibility for the same program or to change between these programs if the following conditions are met:

(a) The client is currently receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-115-0530

#### Certification Period; OHP

(1) For an OHP-OPU applicant not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, SAC, or child welfare medical program benefits, the initial OHP certification period (see OAR 461-001-0000) begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following six calendar months. All other OHP-OPU certification periods are for six months.

(2) For an OHP-CHP, OHP-OPC, or OHP-OP6 applicant not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, SAC, or child welfare medical program benefits, the initial certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following twelve calendar months. All other OHP-CHP, OHP-OPC, or OHP-OP6 certification periods are for twelve months.

(3) A client’s OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(4) To establish a new certification period, an OHP benefit group (see OAR 461-110-0750) must complete a redetermination of eligibility and be found eligible.

(5) When an individual wishes to be added to an OHP benefit group already certified for OHP, the entire group must establish a new certification period. If, as a result of the new redetermination process, the new filing group (see OAR 461-110-0400) is ineligible, the original benefit group remains eligible for the remainder of its certification period.

(6) If a member leaves an OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(7) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household’s OHP filing group. The certification period for the new benefit group ends the later of the date the current client’s certification period or the filing group’s period was set to end.

(8) A pregnant woman found eligible for the OHP OPP program is not assigned a certification period — she is eligible for the period described in OAR 461 135 0010.

Stat. Auth: ORS 409.050, 411.060, 414.042

Stats. Implemented: ORS 409.050, 411.060, 411.070, 414.042

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-130-0335

#### Removing Disqualifications; Effect on Benefits

(1) An applicant who would be subject to disqualification but withdraws the application before benefits are approved is not subject to disqualification.

(2) In the Food Stamp and TANF programs, a filing group (see OAR 461-110-0330 and 461-110-0370) is not subject to disqualification due to a member’s conduct if that individual leaves the household. Should the member join another filing group, that group is subject to the member’s most recent disqualification.

(3) In the Food Stamp program, the disqualification ends the first day of the month following the month in which information is provided to the Department justifying the change in the client’s participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(3).

(4) REF and TANF clients who are disqualified for failure to meet requirements of the JOBS program must comply before the disqualification can be removed.

(a) When the Department removes a disqualification due to a client’s compliance with participation requirements and completion of a cooperation period of two consecutive weeks specified in a new, revised, or current case plan (see OAR 461-001-0025), the client is eligible for cash benefits effective the date the client agreed to re-engage.

(b) Prior to the effective date of a proposed disqualification, a client who states to an appropriate employee of the Department a desire to cooperate with participation requirements must be assigned a cooperation period of two consecutive weeks. The client must complete a new or revised case plan, or agree to complete each activity (see OAR 461-001-0025) in the current case plan. The disqualification ends after the client participates for two consecutive weeks at which time the cash benefits are restored. If the first day of the month occurs during the two consecutive weeks, benefits will be restored retroactive to the first of the month.

(c) On or after the date the disqualification was proposed to take effect, a client who states to an appropriate employee of the Department a desire to cooperate with participation requirements must be assigned a cooperation period of two consecutive weeks. The client must complete a new case plan before cash benefits are restored. The disqualification ends after the client participates for two consecutive weeks.

(d) For a client who completes the cooperation period of two consecutive weeks described in subsection (c) of this section, the disqualification ends and only one month of the penalty imposed counts as a disqualification.

(5) In the TANF program, a disqualification ends when the Department changes the participation classification of the disqualified individual to exempt (see OAR 461-130-0310) or when the client complies

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with the requirements of the employment program (see section (4) of this rule). For a client who becomes exempt, the disqualification ends on the first day of the month in which the client informs the Department or the Department becomes aware of the facts that justify the change.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0010

### Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) Except for a client in a two-parent family for which deprivation is based on unemployment or underemployment of the primary wage earner; a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345; a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0110; and a client who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following individuals are assumed eligible for MAA:

(a) A client receiving or eligible to receive TANF cash benefits.

(b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Pre-TANF program (see OAR 461-135-0475).

(e) A child in a benefit group (see OAR 461-110-0750) whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(3) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(5) A child (see OAR 461-001-0000) born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC benefits is assumed eligible for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(6) Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(7) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(8) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB BAS program.

(9) A client is assumed eligible for REFM if:

(a) The client is receiving cash assistance through the REF program;  
(b) The client loses eligibility for cash assistance through the REF program only because of income or resources;

(c) The client loses eligibility for the EXT, MAA, MAF, or SAC programs, but still meets the requirements of the REFM program; or

(d) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 412.049, 414.025, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0075

### Limitation on Eligibility Period; TANF

(1) A minor parent head of household or an adult may not receive a TANF grant in Oregon if the minor parent head of household or adult has received a TANF grant in excess of 60 months except as allowed in this rule.

(2) The following months do not count toward the time limit in section (1) of this rule:

(a) Months prior to July 1, 2003 in which a minor parent head of household or an adult received a TANF grant in Oregon or another state.

(b) Months between July 1, 2003 and September 30, 2007 in which a minor parent head of household or adult received TANF in Oregon; and

(A) Participated in required JOBS activities or other education, employment, or job training program including teen parent programs; or

(B) Was not required to participate in JOBS activities or other education, employment, or job training program including teen parent programs.

(c) Months beginning July 1, 2003 in which the family resided in Indian Country (as defined in 18 U.S.C. 1151) and 50 percent or more of the adult residents of that area were unemployed.

(d) Months beginning October 1, 2007 in which the minor parent head of household or adult is a participant in the Oregon JOBS Plus, Pre-TANF, Post-TANF, or SFPSS programs.

(e) Months beginning October 1, 2007 in which the filing group (see OAR 461-110-0330) is a two-parent family receiving cash assistance in Oregon for which deprivation is based on unemployment or underemployment of the primary wage earner.

(f) Months beginning October 1, 2007 in which the individual who is now a parent or pregnant was in that month a minor child and neither the head of a household nor married to the head of a household.

(g) Months beginning October 1, 2007 in which a minor parent head of household or adult received aid in Oregon and is a participant in the Degree Completion Initiative (DCI) activity (see OAR 461-001-0025) enrolled in an educational institution.

(h) Months beginning October 1, 2008 in which a minor parent head of household or adult received aid in Oregon and is a participant in the Parents as Scholars (PAS) activity (see OAR 461-001-0025) enrolled in an educational institution consistent with OAR 461-190-0199.

(i) Months beginning October 1, 2007 in which the individual is unable to obtain or maintain employment for a sufficient number of hours in a month to satisfy the federally required participation rates (see OAR 461-001-0025) because the individual:

(A) Is a victim of domestic violence (see OAR 461-001-0000);

(B) Has a certified learning disability;

(C) Has a verified alcohol and drug or mental health condition;

(D) Has a disability (see OAR 461-001-0000);

(E) Has a child with a disability, which prevents the parent from obtaining or keeping employment;

(F) Is providing care for a family member who lives in the home and has a disability;

(G) Is deprived of needed medical care; or

(H) Is subjected to battery or extreme cruelty. For purposes of this rule, an individual is subjected to battery or extreme cruelty if the individual has been subjected to one or more of the following:



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- (i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.
- (ii) Sexual abuse.
- (iii) Sexual activity involving a dependent child.
- (iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
- (v) Threats of, or attempts at, physical or sexual abuse.
- (vi) Mental abuse.
- (vii) Neglect or deprivation of medical care.

(3) Months that do not count toward the time limit based on a condition described in paragraphs (2)(h)(B) to (2)(h)(F) of this rule require documentation from a licensed or certified professional qualified to make such a determination.

(4) A minor parent head of household or an adult may not be denied a TANF grant under section (1) of this rule during months that qualify as exempt from time limits under sections (2), and (3) of this rule.

(5) Each minor parent head of household and adult who qualifies for a TANF grant under this rule must also meet all other TANF eligibility requirements and cooperate with the requirements of his or her case plan, unless good cause (see OAR 461-130-0327) exists.

(6) Except as provided otherwise in section (4) of this rule, a minor parent head of household or an adult in the benefit group who exceeds the 60-month time limit is removed from the need group (see OAR 461-110-0630). When a minor head of household or adult is removed from the need group under this section, the remaining need group members may continue to receive TANF benefits.

(7) If a minor parent head of household or adult qualifies under sections (2), (3), or (4) of this rule, any disqualifications that have been accrued for the benefit group remain in place.

Stat. Auth.: ORS 411.060, 412.049, 412.079

Stats. Implemented: ORS 411.060, 411.117, 412.049, 412.079

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0085

### Requirement to Attend an Assessment or Evaluation, or Seek Medically Appropriate Treatment for Substance Abuse and Mental Health; Disqualification and Penalties; Pre-TANF, REF, TANF

In the Pre-TANF, REF, and TANF programs:

(1) For the purposes of this rule:

(a) "Assessment for substance abuse" means an assessment performed by an appropriate licensed professional with the purpose of discovering the presence of substance abuse.

(b) "Controlled substance" means a drug or its immediate precursor classified in Schedules I through V under the Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term "precursor" in this subsection does not control and is not controlled by the use of the term "precursor" in ORS 475.840 to 475.980. Alcohol is not a controlled substance.

(c) "Self-identified illegal use" means an individual states he or she illegally used a controlled substance within the previous 30 days. Illegal use does not include the use of a controlled substance pursuant to a valid prescription, or other use authorized by the Uniform Controlled Substances Act, ORS 475.005 to 475.285 and 475.840 to 475.980, the federal Controlled Substances Act, or other Federal law.

(2) When directed by the Department, an adult member or parenting teen in the need group (see OAR 461-110-0630) must participate in:

(a) An assessment for substance abuse if:

(A) The individual has self-identified illegal use of a controlled substance; and

(B) The assessment is available and at no cost to the individual.

(b) Medically appropriate treatment for substance abuse if it is available and at no cost to the individual when:

(A) The individual reports a qualified and appropriate professional has diagnosed the individual with a substance abuse disorder within the previous twelve months; or

(B) An assessment resulted in a diagnosis requiring medically appropriate treatment for the individual to be successful in the workplace.

(3) When directed by the Department, an adult member or parenting teen in the need group (see OAR 461-110-0630) must participate in medically appropriate treatment for mental health if it is available and at no cost to the individual when:

(a) The individual reports a qualified and appropriate professional has diagnosed the individual with a mental health disorder within the previous twelve months; or

(b) An evaluation resulted in a mental health diagnosis requiring medically appropriate treatment for the individual to be successful in the workplace.

(4) An individual is responsible for providing information needed by the Department to determine whether the individual had good cause (see OAR 461-135-0087) for failing to meet the requirements of this rule. If a medical condition must be evaluated in regard to the requirements of this rule, the Department will assist the client in obtaining a medical opinion from an appropriate medical professional.

(5) An individual who refuses to participate in a required assessment, evaluation, or the medically appropriate treatment required by this rule is subject to disqualification in accordance with this section and OAR 461-130-0330 only after the individual has had an opportunity to participate in the re-engagement process (see OAR 461-190-0231) including a determination by the Department of whether the individual had good cause for non-participation. The penalties are progressive and, once imposed, continue as long as the individual refuses to participate, regardless of a change in the exempt classification of the individual under the JOBS program (see OAR 461-130-0310).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0089

### Demonstrating Compliance with Substance Abuse and Mental Health Requirements; Restoring Cash Benefits

In the Pre-TANF, REF, and TANF programs:

(1) In order to end a penalty imposed under OAR 461-135-0085, a client must state to an appropriate Department employee a desire to cooperate with participation requirements and complete a cooperation period of two consecutive weeks. The client must demonstrate a willingness to participate in treatment required under OAR 461-135-0085 if treatment is still a requirement.

(a) Prior to the effective date of a proposed disqualification, the client must complete a new or revised case plan, unless the current case plan is still valid. The disqualification ends after the client participates for two consecutive weeks at which time the cash benefits are restored. If the first day of the month occurs during the two consecutive weeks, benefits will be restored retroactive to the first of the month.

(b) On or after the date the disqualification took effect, the client must complete a new or revised case plan, unless the current case plan is still valid, before cash benefits are restored. The disqualification ends after the client participates for two consecutive weeks.

(2) When the Department removes a disqualification due to a client's compliance with the requirements under OAR 461-135-0085, cash benefits are restored back to the date the client agreed to re-engage.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049, 412.089

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0730

### Specific Requirements; QMB, SMB, SMF

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.

(b) A client who qualifies for QMB-BAS is not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB DW:

(a) To qualify for the QMB-DW program, an individual must be eligible for Part A of Medicare as a qualified worker with a disability under Section 1818A of the Social Security Act (42 USC 1395i-2a). This is an individual under age 65 who has lost eligibility for Social Security disability benefits because the individual has become substantially gainfully

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employed, but can continue to receive Part A of Medicare by paying a premium.

(b) A QMB-DW client is eligible only for payment of premiums for Part A of Medicare. If the client is eligible for any other medical assistance program the client is not eligible for QMB-DW.

(3) The following requirements apply to QMB SMB:

(a) To qualify for QMB SMB, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.

(b) A client who qualifies for QMB SMB is not eligible to receive the full range of the Department's medical services. QMB SMB benefits are limited to payment of Medicare Part B premiums.

(4) The following requirements apply to QMB-SMF:

(a) A client who is institutionalized (residing in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) is not eligible for QMB-SMF.

(b) A client who qualifies for QMB-SMF is not eligible to receive the full range of the Department's medical services. QMB-SMF benefits are limited to payment for Medicare Part B premiums.

(c) The QMB-SMF program is subject to an enrollment cap based on the federal allocation. If the enrollment in this program exceeds the federal allocation, the program may be closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2006(Temp), f. & cert. ef. 2-6-06 thru 6-30-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; SSP 19-2008(Temp), f. & cert. ef. 8-8-08 thru 12-28-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0745

### Eligibility for Individuals in Acute Care Settings; OSIPM

An individual in an acute care hospital or nursing facility is eligible for the OSIPM program if the individual:

(1) Meets all eligibility requirements for OSIPM except that income is above the program standards;

(2) Has income at or below 300 percent of the full SSI standard or has established a qualifying trust as specified in OAR 461-145-0540; and

(3) Requires a continuous period of care (see OAR 461-001-0030).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0780

### Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the individual when he or she became ineligible for SSI or OSIP is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment. Add that figure to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment. For spouses in the same financial group, perform the above calculation for each spouse, combine the results and add the subtotal to all other countable unearned and adjusted earned income. If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-

160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

[ED. NOTE: Calculations referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-0832

### Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 411.694, 411.708, 411.795, 414.105, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 414.105, 416.310, and 416.340.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse; by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) "Blind child" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens; or

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(7) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

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(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(8) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(9) "Disabled child" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(10) "Estate" means:

(a) With respect to the collection of payments made for public assistance provided prior to July 18, 1995, or for exclusively state funded public assistance, all real property, personal property, or other assets included within a recipient's estate, or the estate of the recipient's spouse, as such estate is defined by applicable state probate law.

(b) With respect to the collection of payments made for public assistance provided on or after July 18, 1995:

(A) For recipients who die prior to October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

- (i) Tenancy by the entirety;
- (ii) Joint tenancy;
- (iii) Tenancy in common;
- (iv) Not as tenants in common, but with the right of survivorship;
- (v) Life estate;
- (vi) Living trust;
- (vii) Annuity purchased on or after April 1, 2001; or
- (viii) Other similar arrangement.

(B) For recipients who die on or after October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death of the recipient, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

- (i) Tenancy by the entirety;
- (ii) Joint tenancy;
- (iii) Tenancy in common;
- (iv) Not as tenants in common, but with the right of survivorship;
- (v) Life estate;
- (vi) Living trust;
- (vii) Annuity purchased on or after April 1, 2001; or
- (viii) Other similar arrangement, such as an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first date of request established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the public assistance programs referenced in OAR 461-135-0835(2).

(11) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(12) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(13) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(14) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(15) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(16) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the

death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(17) "Legal title" means legal ownership by a person.

(18) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.

(19) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(20) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(21) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or legal title held by a person.

(22) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(23) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(24) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(25) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. Real property includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the real property may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(26) "Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(27) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(28) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(29) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(30) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(31) "Value" means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 410.070, 411.060, 411.795, 414.105

Stats. Implemented: ORS 411.708, 411.795, 414.105, 416.310, 416.340

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09



# ADMINISTRATIVE RULES

## 461-135-1102

### OHP-OPU; Effective Dates for the Program

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants other than an OHP Reservation List Applicant permitted under OAR 461-135-1125. Except as provided in sections (2) to (4) of this rule, a new applicant is an individual with a date of request (see OAR 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) An individual is not a new applicant if the Department determines that the individual is continuously eligible for medical assistance as follows:

(a) The individual is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to subsections (b) to (e) of this section, and the Department determines that the individual continues after that date to meet the eligibility requirements for OHP-OPU.

(b) The individual is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for CAWEM based on the OHP-OPU program, and the Department determines that the individual continues to meet the eligibility requirements for OHP-OPU except for citizenship or alien status requirements.

(c) The eligibility of the individual ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or under CAWEM based on such program, and at that time the Department determines that the individual meets the eligibility requirements for OHP-OPU.

(d) The individual is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the individual meets the eligibility requirements for OHP-OPU.

(e) The Department determines that the individual was continuously eligible for OHP-OPU on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) A Family Health Insurance Assistance Program (FHIAP) recipient who notified FHIAP by May 31, 2008 of the choice to move to OHP Standard when notified that the FHIAP subsidy would end effective May 31, 2008 is not considered a new applicant for initial OHP Standard benefits that are effective June 1, 2008.

(4) An individual who is not continuously eligible under section (2) of this rule is not a new applicant if the individual:

(a) Has eligibility end under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program, or is a child in the custody of the Department whose eligibility for Medicaid ends due to the child's age;

(b) Established a date of request prior to the eligibility ending date in subsection (a) of this section; and

(c) Meets the eligibility requirements for OHP-OPU or the related CAWEM program within 45 days of the date of request.

(5) Except as provided in section (2) of this rule, an individual who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(6) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042, 414.839

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 13-2008, f. 5-30-08, cert. ef. 6-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-135-1195

### Specific Requirements; SFPSS Eligibility

In the SFPSS program:

(1) To be eligible, a client must meet the following requirements:

(a) Be an adult;

(b) Meet all TANF program eligibility requirements (except as provided otherwise in this rule);

(c) Be receiving TANF benefits;

(d) Have an impairment that meets the requirements in OAR 461-125-0260;

(e) File an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act; and

(f) Sign an Interim Assistance Authorization authorizing the Department to recover interim SFPSS benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or the initial

payment after the decision on SSI eligibility. The following provisions are considered part of the Interim Assistance Authorization:

(A) Interim SFPSS benefits include only those SFPSS cash benefits paid to the adult, who is applying for SSI, during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim SFPSS cash benefit.

(C) If the Department cannot stop delivery of a SFPSS benefit issued after the SSI payment is made, the SFPSS payment is included in the interim assistance to the reimbursement to the Department.

(2) Counting earned and unearned income.

(a) The TANF standards in OAR 461-155-0030 are used to determine eligibility for the SFPSS program.

(b) The SFPSS payment standard (see OAR 461-155-0320) is used to determine the benefit amount for the SFPSS program.

(3) When the only adult in the filing group (see OAR 461-110-0330) is applying for SSI, and the child or all children in the filing group are receiving an SSI grant, the family does not receive an SFPSS grant. The family remains on TANF (if eligible) and receives a TANF grant.

(4) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(5) An SFPSS client found by the Social Security Administration (SSA) not to meet disability criteria may continue receiving SFPSS benefits until all SSA administrative appeals are exhausted.

(6) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049, 412.084

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-145-0380

### Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) The following retirement plans and annuities if purchased by a client with funds from the plans authorized by section 401 of the Internal Revenue Code of 1986:

(A) Traditional Defined-Benefit Plan.

(B) Cash Balance Plan.

(C) Employee Stock Ownership Plan.

(D) Keogh Plan.

(E) Money Purchase Pension Plan.

(F) Profit-Sharing Plan.

(G) Simple 401(k).

(H) 401(k).

(d) Retirement plans and annuities purchased by a client with funds from plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).

(e) The following retirement plans and annuities if purchased by a client with funds from the plans authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:

(A) Individual Retirement Annuity.

(B) Individual Retirement Account (IRA).

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Individual Retirement Account (Simple-IRA).

(G) Roth IRA.

(f) The following retirement plans and annuities offered by governments, nonprofit organizations, or unions:

(A) 457(b) Plan.

(B) 501(c)(18) Plan.

(C) Federal Thrift Savings Plan under 5 USC 8439.

(2) An annuity purchased by the spouse (see OAR 461-001-0000) of a client with funds from a retirement plan described in subsection (1)(e) of this rule is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and OAR 461-145-0022.

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(3) Benefits the client receives from pension and retirement plans are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All payments not covered by subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(4) In the OSIP, OSIPM, and QMB programs:

(a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:

(A) The equity value (see OAR 461-001-0000) of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those payments.

(B) The equity value of all pension and retirement plans not covered by paragraph (A) of this subsection that allow clients to withdraw funds, minus any penalty for withdrawal, is counted as a resource.

(b) The equity value of an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the equity value is counted as a resource.

(5) In the FS program, the value of retirement accounts identified in sections 401(a), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), or 501(c)(18) of the Internal Revenue Code, or in a Federal Thrift Savings Plan account are excluded resources.

(6) In the OHP program, the equity value of a pension or retirement plan that allows a client to withdraw funds before retirement is excluded as a resource.

(7) In all programs except the FS, OHP, OSIP, OSIPM, and QMB programs, the equity value of a pension and retirement plan that allows a client to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-145-0540

#### Trusts

(1) This section applies to all trust funds (see OAR 461-001-0000) in the FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) to (10) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) to (8) of this rule.

(4) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(5) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(6) Except as provided in section (9) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(7) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(8) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(9) Notwithstanding the provisions in sections (1) and (3) to (8) of this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

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(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.

(F) Contributions to reserves or payments for child support, alimony, and income taxes.

(G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of \$5,000.

(H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.

(I) Patient liability not to exceed the cost of waived services or nursing facility services.

(10) This section of the rule applies to a trust signed on or after July 1, 2006.

(a) Notwithstanding the provisions of sections (1) and (3) to (8) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

(b) This section of the rule applies to a trust that meets all of the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who have disabilities.

(D) Upon the death of the beneficiary or termination of the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.

(E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(11) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-145-0820

### Deemed Assets; Noncitizen's Sponsor

(1) An individual or organization may sponsor the admission of a noncitizen under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154).

(2) An affidavit of support (USCIS Form I-864) is the agreement between the sponsor and the United States Citizenship and Immigration Services in which the sponsor agrees to provide financial support for the noncitizen so that the noncitizen will not become a public charge.

(3) In all programs except the ERDC, REF, and REFM programs, the countable assets of an individual sponsor and the spouse of the sponsor are considered countable assets of the noncitizen as provided in this section and OAR 461-145-0810 to 461-145-0870. The sponsor's assets are considered available to the noncitizen whether or not the sponsor lives in the same household as the noncitizen. The assets of the sponsor's spouse are considered available only when the spouse lives in the sponsor's household.

(4) OAR 461-145-0830 sets out situations in which the assets of the sponsor and the spouse of the sponsor are not counted, as well as how the income deemed available to the noncitizen is calculated.

(5) The value of the resources deemed available to each noncitizen is determined as follows:

(a) In all programs except the Food Stamp program, the total value of the countable resources is deemed to each sponsored noncitizen according to the rules of the program for which the noncitizen applies.

(b) In the Food Stamp program only, \$1,500 is deducted from the value. The remaining value is divided by the number of noncitizens sponsored by the individual or couple. The result is the value of the resources deemed available to the noncitizen.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-145-0830

### When to Deem the Assets of a Sponsor of a Noncitizen

(1) In the ERDC, REF, and REFM programs, the assets of a sponsor and of a sponsor's spouse are not deemed to the sponsored noncitizen.

(2) In all programs except the ERDC, REF, and REFM programs, the assets of a sponsor and the spouse of the sponsor are considered the assets of the sponsored noncitizen unless at least one of the following subsections applies:

(a) The sponsor has not signed a legally binding affidavit of support, for instance USCIS Form I-864 or I-864A;

(b) The sponsor receives Food Stamp, SSI, or TANF benefits;

(c) The sponsor is deceased. The estate of a deceased sponsor is not responsible for the noncitizen;

(d) The sponsored noncitizen establishes indigence;

(A) A sponsored noncitizen establishes indigence if the total income of the household including in-kind income plus any cash, food, housing, or other assistance provided by other individuals including the sponsor is:

(i) In the FS program, under 130 percent of the federal poverty level.

(ii) In the MAA, OHP, and TANF programs, under the countable income standard.

(iii) In all programs except the FS, MAA, OHP, and TANF programs, is not enough for the noncitizen to obtain food and shelter without program benefits.

(B) Each indigence determination under this subsection is effective for 12 months and may be renewed for additional 12-month periods.

(e) The sponsored noncitizen is a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent, as long as the battered noncitizen does not live in the same household as the person responsible for the battery;

(f) The sponsored noncitizen does not meet the alien status requirement for the program for which he or she applies;

(g) The sponsored noncitizen becomes a naturalized citizen;

(h) The sponsored noncitizen can be credited with 40 qualifying quarters of work; or

(i) The sponsored noncitizen is under 18 years of age.

(3) The following process is used to determine the amount of income considered available to the noncitizen from the noncitizen's sponsor and the spouse of the sponsor. The unearned income of the sponsor and the sponsor's spouse is added to their countable earned income (see OAR 461-140-0010) minus earned income deductions.

(4) In all programs except the FS, REF, and REFM programs, each sponsored noncitizen is considered to have the income calculated according to section (3) of this rule.

(5) In the FS program, each sponsored noncitizen is considered to have the income calculated according to section (3) of this rule divided by the number of the sponsor's:

(a) Current sponsored noncitizens;

(b) Household members who receive support from the sponsor; and

(c) Dependents.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-150-0049

### Prospective Eligibility and Budgeting; ERDC

In the ERDC program:

(1) Prospective eligibility and budgeting (see OAR 461-150-0020) are used.



## ADMINISTRATIVE RULES

(2) Income is budgeted so that the anticipated amount is the same for each month. Determine the type of income (stable, variable, annualized) the client anticipates receiving, then calculate each type of income as follows:

(a) For income that must be annualized, calculate in accordance with OAR 461-150-0090 to arrive at a monthly figure.

(b) For educational income (see OAR 461-145-0150), assign the income to the months it is intended to cover, regardless of when it is received. Prorate the income over these months.

(c) For temporary income and for other situations when the child care need will last two consecutive months or less, anticipate the income to be received in the months of child care need and calculate in accordance with OAR 461-150-0080.

(d) For ongoing stable income, anticipate income in accordance with OAR 461-150-0070.

(e) For ongoing variable income, anticipate income in accordance with OAR 461-150-0080.

(3) A client who is over income for ERDC may reapply in a subsequent month. When the client reapplies, a new budgeting period is established and income recalculated.

Stat. Auth.: ORS 411.060, 411.070, 411.122

Stats. Implemented: ORS 411.060, 411.070, 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-150-0050

#### Use of Prospective or Retrospective Eligibility and Budgeting; GA, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs, the Department determines how and when to use prospective or retrospective eligibility and budgeting as follows:

(1) In the GA, GAM, OSIP (except OSIP-IC), OSIPM (except OSIPM-IC), and QMB programs:

(a) For the initial month, use prospective eligibility and budgeting. Exclude money received from a nonrecurring source before the date of application. If any money remains after the date of application, count it as a resource.

(b) For ongoing months:

(A) Use prospective eligibility and budgeting for unearned income and stable earned income.

(B) In all programs except the OSIP-EPD and OSIPM-EPD programs, use retrospective budgeting for varying earned income.

(C) In the OSIP-EPD and OSIPM-EPD programs, use prospective eligibility and budgeting for varying earned income.

(2) In the OSIP-IC and OSIPM-IC programs, the budget month is the initial month of eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-155-0250

#### Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived *nonstandard living arrangement* (see OAR 461-001-0000), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) *adjusted income standard* takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. See OAR 461-155-0020 for the adjusted number in the household. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice Connected Disability Benefits is less than \$20 [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and receive services in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(e) When one or both spouses receive SSI and are not included in subsection (d) of this section, the two-person need group is used to determine the SIP amount. This amount is used even if one (or both) of the individuals is receiving services and has a need group of one according to OAR 461-110-0630.

(5) In the OSIP and OSIPM programs, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the 2008 federal poverty level for a family of one. This 250 percent limit equals \$2,167 per month or \$26,004 per year.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-155-0270

#### Room and Board and Personal Allowance Standards for Waivered NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in a waived nonstandard living arrangement (see OAR 461-001-0000), the maintenance standard includes the room and board and personal needs standards:

(1) Room and board standard: [Table not included. See ED. NOTE.]

(2) Personal needs standard: [Table not included. See ED. NOTE.]

(3) The room and board payment is required for clients residing in a community based care facility (see OAR 411-027-0025).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-155-0295

#### Income Standard; QMB-SMB

The *adjusted income standard* for QMB-SMB is 120 percent of the 2008 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-155-0300

### Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

- (1) For a single person:
  - (a) Living alone, \$415 for total shelter or \$250 for housing costs only.
  - (b) Living with others, \$193 for total shelter or \$115 for housing costs only.
- (2) For a couple:
  - (a) Living alone, \$513 for total shelter or \$308 for housing costs only.
  - (b) Living with others, \$190 for total shelter or \$114 for housing costs only.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-155-0320

### Payment Standard; SFPSS

The following payment standards apply in the SFPSS program:

- (1) When one adult in the filing group (see OAR 461-110-0330) is applying for SSI or SSDI: [Table not included. See ED. NOTE.]
- (2) When two or more adults in the filing group are applying for SSI/SSDI: [Table not included. See ED. NOTE.]
- (3) The standard for eleven individuals or more in the need group is the sum of the payment for ten individuals in the need group, plus \$109 for each additional individual in the need group, plus the cooperation incentive for ten individuals in the need group.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.014, 412.049

Stats. Implemented: ORS 18.900, 411.060, 411.070, 411.105, 411.117, 411.630, 411.635, 411.660, 411.703, 411.710, 411.816, 412.006, 412.014, 412.049, 414.042

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-155-0500

### Special Needs; Overview

- (1) In the GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, and TANF programs, special needs are needs not included in the basic standard. They may be one-time needs or ongoing needs.
- (2) Ongoing special needs are needs that last several months at a consistent cost. Examples are special diets and accommodation allowances. OAR 461-155-0010 is used to determine how special needs are considered for each program.
- (3) To be eligible for a special need item, a client must have no other available resources in the community or natural support system to meet the need, excluding resources used in determining eligibility.
- (4) To be eligible for a special need item, a client must not be eligible for the item through Medicare, Medicaid, or any other medical coverage.
- (5) A client may be eligible for an ongoing special need item if providing the ongoing special need item is authorized in lieu of additional provider service hours pursuant to OAR 411-030-0002 to 411-030-0090 and is more cost-effective.
- (6) The Department will authorize payment for one-time and ongoing special needs for the following, in accordance with OAR 461-155-0510 to 461-155-0710:
  - (a) One-time needs for the following:

- (A) Community based facility room and board (see OAR 461-155-0630)
- (B) Community transition services (see OAR 461-155-0526)
- (C) Diversion and transition services (see OAR 461-155-0710)
- (D) Home adaptations to accommodate a client's physical condition (see OAR 461-155-0551)
- (E) Home repairs (see OAR 461-155-0600)
- (F) Moving costs (see OAR 461-155-0610)
- (G) Property taxes (see OAR 461-155-0620)
- (b) Ongoing needs for the following:
  - (A) Accommodation allowances (see OAR 461-155-0660)
  - (B) Food for guide dogs and special assistance animals (see OAR 461-155-0530)
  - (C) Laundry allowances (see OAR 461-155-0580)
  - (D) Personal Incidentals and Room and Board Allowance (see OAR 461-155-0700)
  - (E) Restaurant meals (see OAR 461-155-0640)
  - (F) Special diet allowances (see OAR 461-155-0670)
  - (G) Telephone allowances (see OAR 461-155-0680)

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 21-2008(Temp), f. & cert. ef. 10-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-155-0526

### Special Need; Community Transition Services; OSIP and OSIPM

(1) In the OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary for a client to set up housing in Oregon in the client's own home or apartment, or an assisted living facility as long as the facility is not required to provide the item covered by the payment by contract or by the administrative rules governing assisted living facilities (OAR 411-054-0000 to 411-054-0300). Payments are allowed only for a client returning to the community if the client meets the criteria for one of the service priority levels served by the Department according to OAR 411-015-0015(1):

- (a) A client leaving a nursing facility.
- (b) A client who has been admitted as an inpatient and is leaving an acute care hospital.
- (2) Examples of allowable expenses are expenses for: moving belongings; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity, and telephone; climate control; and health and safety measures such as pest eradication or allergen control.

(3) Expenses not allowed include: rent for housing or temporary housing; ongoing utility costs; medical supplies such as lift chairs, reachers, grabbers, wheelchairs, and transfer trays; or recreational items such as a television or cable television access.

(4) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-155-0600

### Special Need; Home Repairs, GA, OSIP, and OSIPM

In the GA, OSIP, and OSIPM programs, the Department will authorize a special need payment for home repairs for homeowners or buyers as a one-time special need within the following limits:

- (1) The repairs must be needed to remove a physical hazard to the health and safety of the client.
- (2) Payment for repairs authorized by this rule:
  - (a) Is limited to the least expensive means possible;
  - (b) Cannot exceed \$1,000 in any 24-month period; and
  - (c) When the home is jointly owned, is limited to a percentage of the cost of the repairs equal to the percentage of client ownership.
- (3) The repairs must cost less than moving to another home.
- (4) Payment is limited to the lowest possible cost that will provide adequate facilities. The client must provide three competitive bids for the repairs, unless there are not three providers of the service in the local area.

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(5) Before approving payment for repairs or new installations, the Department must consider the use value and determine whether it is consistent with the service plan for the client to remain in the house.

(6) Providers of the repairs or new installations must ensure that the work being completed meets current building codes.

(7) Repairs or replacements include, but are not limited to:

(a) Electrical wiring that does not constitute conversion to electrical space heating but that is needed:

(A) To avoid condemnation; or

(B) To remove a definite fire or shock hazard as documented by appropriate public officials.

(b) Plumbing — but not including the costs of plumbing items with which the house is not already equipped except that a toilet may be paid for when newly required by the creation or extension of a sewer district. Examples of what plumbing-related items may be covered include:

(A) Toilets and sinks.

(B) Cleaning or replacing septic tanks or cesspools.

(C) Installing sewer connections from house to street—but not sewer installation — if required by the creation of a new sewer district or the extension of an existing district.

(c) Repair or replacement of existing electric pumps for wells needed to continue the water supply. This does not include drilling a new well.

(d) Heating equipment — repair of heating stoves, furnaces and water heaters and, if repair is not possible, replacement with the least expensive adequate equipment.

(e) Repair of roofs.

(f) Repair or replacement of steps and repair of floors.

(8) A client with a life estate is not eligible for this special need allowance. The individual who will benefit from the life estate, following the death of the client, is considered responsible for the home repairs.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-155-0610

#### Special Need; Moving Costs; GA, OSIP, OSIPM

In the GA, OSIP, and OSIPM programs:

(1) The Department will authorize payment for the cost of moving a client's household effects as a one-time special need if the requirements of at least one of the following subsections are met:

(a) Moving is essential to provide nonhazardous housing. "Hazardous" housing means a building so deteriorated and unsafe that it is uninhabitable or subject to condemnation. If no official certification to that effect can be obtained, the condition of the dwelling must have been seen by a Department employee and documented in the case record.

(b) The client has been evicted for reasons other than his or her own neglect or failure to make rent or house payments.

(c) The move is a result of domestic violence or protective services.

(d) For a client in a nonstandard living arrangement (see OAR 461-001-0000), the client must move because the level of needed services increases or decreases.

(e) The needs of the client would be better met out of state.

(2) Payment for moving costs authorized by this rule:

(a) May be authorized for not more than one move in any 12-month period;

(b) Is limited to the least expensive means possible; and

(c) Cannot exceed \$500 in any 12-month period.

(3) Payments necessary for a one-time move may be made over a period not to exceed 30 consecutive days.

(4) A filing group that has received a payment for moving costs under this rule is not eligible for a moving cost payment again until the first day of the 12th month following the first payment that was made for the most recent month.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-155-0700

#### Special Need; Personal Incidentals and Room and Board Allowances; OSIP, OSIPM

In the OSIP and OSIPM programs:

(1) In the following circumstances, personal incidentals and room and board allowances may be paid for a client to reside in a community based care facility (see OAR 461-155-0630) to avoid placement in a nursing facility or leave a nursing facility or an acute care hospital, when an individual:

(a) Is determined to be eligible based on a disability determination made by the Department (see OAR 461-125-0370).

(A) To receive this payment, a client must pursue SSI by making application with the Social Security Administration (SSA) and appealing denials until SSA makes a final administrative decision. If SSI is denied at the final SSA administrative level, the client is no longer eligible for this payment.

(B) The payment is the difference between the countable income of the client and the OSIPM adjusted income standard (see OAR 461-155-0250).

(b) Is leaving a nursing facility and limited to a maximum SSI payment of \$30 or to a maximum Veterans benefit payment of \$90. The payment is the difference between the countable income of the client and the OSIPM adjusted income standard (see OAR 461-155-0250).

(c) Has lost eligibility for SSI due to the qualified non-citizen status of the individual and has not met the requirements to become a naturalized citizen.

(A) The individual must pursue naturalization.

(B) The payment is the difference between the countable income of the client and the OSIPM adjusted income standard (see OAR 461-155-0250).

(d) Does not have sufficient income to cover the needs of the community spouse income allowance of the individual as outlined in OAR 461-160-0620(3)(d). The allowance is the lesser of the following:

(A) The OSIPM adjusted income standard (see OAR 461-155-0250);

or

(B) The difference between the calculated community spouse income allowance (see OAR 461-160-0620(3)(d)) and the amount of income that the client has available to divert to the community spouse.

(2) The payment amount is prorated in the first month for a client who moves to a community based care facility on any day other than the first day of the month.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-155-0710

#### Special Need; Diversion and Transition Services; OSIP and OSIPM

In the OSIP and OSIPM programs:

(1) The Department may authorize one-time payments for expenses that the Department has determined are necessary to divert or transition individuals from nursing facility services. Payments are allowed for clients who are receiving or eligible to receive community based care (see OAR 461-001-0000).

(2) Payments will be authorized at the lowest possible cost.

(3) To be eligible for payment, clients may not be eligible for the item through Medicare, Medicaid, or any other medical coverage.

(4) Payment for a household item is not allowed if the community based care facility is required to provide the item by contract or administrative rule.

(5) Payment is not allowed if the item or service may be provided under any other special need rule in this division (OAR 461-155-0510 to 461-155-0700).

(6) Payments must be approved in advance by Seniors and People with Disabilities Division central office staff.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: SSP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-160-0100

#### How Income Affects Eligibility and Benefits; MAA, MAF, REF, SAC, SFPSS, TANF

(1) Countable income (see OAR 461-001-0000) and adjusted income (see OAR 461-001-0000) are used to determine eligibility for the MAA, MAF, REF, SAC, SFPSS, and TANF programs using the countable and adjusted income standards in OAR 461-155-0030 as explained in this section:

(a) The financial group's countable income is compared to the countable income limit standard for the need group. If countable income equals or exceeds the standard, the benefit group is not eligible.



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(b) If countable income is less than the countable income standard, the adjusted income is compared to the payment standard. If the adjusted income equals or exceeds the payment standard for the need group (see OAR 461-110-0630), the benefit group (see OAR 461-110-0750) is not eligible. If the adjusted income is less than the payment standard for the need group, the benefit group meets the income eligibility standard.

(2) Adjusted income is used to determine the monthly benefit in the REF, SFPSS, and TANF (except for a client who receives JOBS Plus income — see OAR 461-145-0130) programs as explained in this section:

(a) The monthly benefit is calculated by subtracting adjusted income from the applicable payment standard for the need group. The remainder is the benefit amount except for a need group that includes an ineligible non-citizen.

(b) If the need group contains an ineligible non-citizen, the benefit is the lesser of the remainder calculated in subsection (a) of this section and the payment standard for the benefit group.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-160-0410

### Use of Income and Income Deductions When There Are Ineligible or Disqualified Group Members; FS

When a member of the financial group (see OAR 461-110-0530) is not in the need group (see OAR 461-110-0630), benefits in the Food Stamp program are calculated as follows:

(1) If the member is a qualified non-citizen (see OAR 461-120-0125(1)(a)-(g)) who does not meet the alien status requirements, the following procedure is used:

(a) Benefits are calculated as if the qualified non-citizen is eligible, except that a TANF grant received by the filing group (see OAR 461-110-0370) is prorated per section (3) of this rule.

(b) Benefits are then calculated as if the qualified non-citizen is not a member of the filing group, except that a TANF grant received by the filing group is prorated per section (3) of this rule. Any income received by another member of the filing group from the qualified non-citizen is counted as income of the financial group. No expenses paid by the qualified non-citizen are deducted from gross income.

(c) The household's benefits are the lesser of the amounts calculated in subsections (a) and (b) of this section.

(2) The process described in sections (3) and (4) of this rule is used if the member is:

(a) A qualified non-citizen (see OAR 461-120-0125(1)(i)) who does not meet the alien status requirements of OAR 461-120-0110;

(b) A non-citizen but not a qualified non-citizen;

(c) Disqualified for failing to obtain or provide a Social Security Number; or

(d) Unwilling to disclose alien status.

(3) If the member is in a group described in section (2) of this rule:

(a) The member's countable (see OAR 461-001-0000) income is prorated among the members in the financial group.

(b) The pro rata share of each individual not in the need group is excluded.

(c) The rest of the prorated income is countable income for the financial group.

(4) An ineligible or disqualified member covered by section (2) of this rule is entitled to all income deductions for which the member qualifies. When paid by the member, or billed to the member and unpaid, deductions for shelter, child support, and dependent care are calculated as follows:

(a) The deductions, except deductions for the utility standard, are prorated among the members of the financial group.

(b) The prorated share of the members of the need group is deducted.

(c) The deduction for the utility standard is made in accordance with OAR 461-160-0420.

(5) The countable income of the following financial group members, subject to allowable deductions, is used to determine benefits:

(a) A client disqualified for failure to comply with the requirements of the OFFSET program or because of an intentional program violation.

(b) A client:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) Violating a condition of probation or parole imposed under a federal or state law.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 6-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-160-0580

### Excluded Resource; Community Spouse Provision (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs:

(1) This rule applies to an institutionalized spouse who has applied for benefits because he or she is in or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIP describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$109,560.

(B) \$21,912 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable

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resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIP resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$109,560) plus the OSIP resource standard for one person.

(B) \$21,912 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIP resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph

(i) Of this paragraph is larger than the amount described in subparagraph;

(ii) It is the difference between the following:

(I) The monthly income allowance computed in accordance with OAR 461-160-0620.

(II) The difference between:

(i) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(iii) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse of the client.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-160-0620

#### Income Deductions and Client Liability; Long-Term Care Services or Waivered Services; OSIPM

In the OSIPM program:

(1) Deductions from income are made for a client residing in or entering a long-term care facility or receiving Title XIX waived services as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,750 is added to the amount over \$525 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,739 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,750. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,750.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the client meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert.

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ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-165-0030

### Concurrent and Duplicate Program Benefits

(1) An individual may not receive benefits from the Department of the same type (that is, cash, medical, or food stamp benefits) for the same period as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs, except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) A client may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA client becomes eligible for the TANF program, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(c) An REF or TANF recipient may receive ERDC for a child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), but who may not be included in the REF or TANF filing group.

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the child's parent.

(C) A TANF *benefit group* when living with a needy caretaker relative receiving SSI.

(e) A client in the FS program who leaves a *filing group* (see OAR 461-110-0370) that includes an individual who abused them and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive food stamp benefits twice during the month the client enters the domestic violence shelter or safe home.

(f) A QMB client may also receive medical benefits from EXT, MAA, MAF, OSIPM, REFM, or SAC.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or food stamp benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash benefits may be authorized for a client in the Pre-TANF program if benefits from another state will end by the last day of the month in which the client applied for TANF.

(3) In the FS program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) An individual may not receive benefits from the EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC programs while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 412.124, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.816, 412.049, 412.124, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0010

### Reporting Changes — Overview

A client is required to report a change in circumstances in accordance with the reporting system in which the client participates, OAR 461-170-0011; and

(1) For each program in which a client participates, the Department determines the appropriate reporting system. The Department's reporting systems are Anticipating with Periodic Review (APR), Change Reporting System (CRS), Monthly Reporting System (MRS), Simplified Reporting System (SRS), and Transitional Benefit Alternative (TBA). In addition to any required report form, when a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) A client using APR must report a change according to OAR 461-170-0011. A report form is processed according to OAR 461-170-0011, 461-170-0150, and 461-170-0160.

(b) A client using CRS must report a change according to OAR 461-170-0011.

(c) A client using MRS must report a change in income on the Monthly Change Report form designated by the Department. A Report form is processed according to OAR 461-170-0100, 461-170-0110, and 461-170-0120. Any other changes must be reported according to OAR 461-170-0011.

(d) A client using SRS must report a change according to OAR 461-170-0011 and 461-170-0102. An Interim Change Report form is processed according to OAR 461-170-0011 and 461-170-0101 to 461-170-0104.

(e) A client using TBA is not required to report any change.

(2) A change is considered reported effective the date a Department branch office serving a program covered by this division of rules receives the information.

(3) A change reported for one program is considered reported for all programs in which the client participates.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0011

### Changes That Must be Reported

(1) A change in employment status is considered to occur as follows:

(a) For a new job, the change occurs the first day of the new job.

(b) For a job separation, the change occurs on the last day of employment.

(2) A change in source of income is considered to occur as follows:

(a) For earned income, the change occurs upon the receipt by the client of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.

(b) For unearned income, the change occurs the day the client receives the new or changed payment.

(3) A client must report the following changes. The report may be made orally or in writing.

(a) In the BCCM program, a client must report either of the following changes within 10 days of occurrence.

(A) A change in health care coverage.

(B) A change in residence.

(b) In the ERDC program, a client must report any of the following changes within 10 days of occurrence.

(A) A change in child care provider.

(B) A change in employment status.

(C) A change in mailing address or residence.

(D) A change in membership of the filing group (see OAR 461-110-0350).

(E) A change in source of income expected to continue.

(c) In the EXT program, a client must report any of the following changes within 10 days of occurrence.

(A) A change in health care coverage.

(B) A change in name.

(C) A change in pregnancy status of any member of the filing group (see OAR 461-110-0330).

(D) A change in residence.



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(E) A member in filing group is no longer a dependent child (see OAR 461-001-0000).

(d) In the FS program:

(A) A client assigned to CRS must report any of the following changes within 10 days of occurrence.

(i) A change in earned income of more than \$100.

(ii) A change in unearned income of more than \$50.

(iii) A change in source of income.

(iv) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.

(v) A change in residence and the shelter costs in the new residence.

(vi) A change in the legal obligation to pay child support.

(vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.

(viii) Acquisition or change in ownership of a non-excluded vehicle.

(B) A client assigned to MRS must report any of the following changes within 10 days of occurrence, except for changes in income which must be reported in accordance with the rules related to MRS (OAR 461-170-0010, 461-170-0100, 461-170-0110).

(i) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.

(ii) A change in residence and the shelter costs in the new residence.

(iii) A change in the legal obligation to pay child support.

(iv) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(v) Acquisition or change in ownership of a non-excluded vehicle.

(C) A client assigned to SRS must report any of the following changes by the tenth day of the month following the month of occurrence.

(i) Monthly income exceeding the countable income limit in the FS program.

(ii) A change in mailing address.

(D) A client assigned to TBA is not required to report any changes.

(e) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client must report all changes that may affect eligibility within 10 days of occurrence, including any of the following changes. A client assigned to MRS also must report changes in income in accordance with the rules related to MRS (see OAR 461-170-0010, 461-170-0100, 461-170-0110).

(A) A change in employment status.

(B) A change in health care coverage.

(C) A change in membership of the household group (see OAR 461-110-0210).

(D) A change in marital status.

(E) A change in residence.

(F) A change in resources.

(G) A change in source or amount of income.

(f) In the MAA, MAF, REF, SAC, SFPSS, and TANF programs, clients assigned to CRS must report any of the following changes within 10 days of occurrence.

(A) Acquisition or change in ownership of a non-excluded vehicle.

(B) A change in earned income more than \$100.

(C) A change in employment status.

(D) A change in membership of the household group (see OAR 461-110-0210).

(E) A change in mailing address or residence.

(F) A change in pregnancy status of any member of the filing group.

(G) A change in source of income.

(H) A change in unearned income more than \$50.

(I) A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.

(J) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(g) In the MAA, REF, SFPSS, and TANF programs, a client assigned to MRS must report any of the following changes within 10 days of occurrence, except for changes in income, which must be reported in accordance with the rules related to MRS (see OAR 461-170-0010, 461-170-0100, 461-170-0110).

(A) Acquisition or change in ownership of non-excluded vehicles.

(B) A change in membership of the household group (see OAR 461-110-0210).

(C) A change in mailing address or residence.

(D) A change in pregnancy status of any member of the filing group.

(E) A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.

(F) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(h) In the OHP program, a client must report any of the following changes within 10 days of occurrence.

(A) A change in availability of employer-sponsored health insurance.

(B) A change in health care coverage.

(C) A change in mailing address or residence.

(D) A change in name.

(E) A change in pregnancy status of any member of the filing group (see OAR 461-110-0400).

(i) In the REFM program, clients must report the following changes within 10 days of occurrence.

(A) A change in membership of the household group (see OAR 461-110-0210).

(B) A change in residence.

Stat. Auth.: ORS 411.060, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.105, 411.816, 412.014, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

### 461-170-0100

#### Monthly Reporting System (MRS)

(1) A filing group is not subject to the requirements of the monthly reporting system (MRS) unless it is required to participate by section (2), (3), or (4) of this rule.

(2) In the FS program, the filing group can only participate in the MRS if a member is in the MRS for another program, unless the filing group is specifically excluded by section (5) of this rule.

(3) In the GA, GAM, OSIP, OSIPM, and QMB programs, a filing group not specifically excluded by section (5) of this rule must participate in the MRS if it has varying earned or unearned income that cannot be averaged, converted, or annualized.

(4) In the MAA, REF, and TANF programs, unless it is specifically excluded by section (5) of this rule, a filing group must participate in the MRS if the filing group:

(a) Is in the MRS for another program; or

(b) Has countable earned or unearned income that is not the same every month and cannot be anticipated, averaged, converted, or annualized.

(5) The following filing groups are excluded from participating in the MRS:

(a) A filing group in the EA, ERDC, EXT, REFM, SAC, or TA-DVS programs.

(b) An FS filing group for which any of the following are true:

(A) At least one member is a migrant or seasonal farm worker.

(B) The members are homeless.

(C) Each adult member is elderly (see OAR 461-001-0000) or has a disability (see OAR 461-001-0000), and no financial group (see OAR 461-110-0530) member has earned income.

(D) At least one member is receiving ERDC.

(E) The group resides on an Indian Reservation.

(c) An FS or TANF filing group that includes a member working under a JOBS Plus agreement.

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs, a filing group receiving or deemed to be receiving SSI.

(e) An MAF filing group for its MAF benefits. The group may be in the MRS for other program benefits the group receives.

(f) An OHP filing group for its OHP benefits. The group may be in the MRS for other program benefits the group receives.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 70-1989, f. 11-30-89, cert. ef. 12-1-89; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004,

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f. 12-30-04, cert. ef. 1-1-05; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0101

### Simplified Reporting System (SRS); FS

In the Food Stamp program:

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the simplified reporting system (SRS).

(2) A client certified to receive benefits for less than six months may not participate in SRS.

(3) A filing group (see OAR 461-110-0370) may not participate in SRS and is removed from SRS if the group includes an individual who is:

(a) In the monthly reporting system (MRS) for another program; or

(b) Receiving benefits from the ERDC program.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0102

### Required Reports for the Simplified Reporting System (SRS) — Interim Change Report; FS

In the Food Stamp program:

(1) During the sixth month of a *certification period* (see OAR 461-001-0000), a client participating in SRS and certified for benefits for longer than six months must submit to the Department, on a form designated by the Department, an Interim Change Report of household circumstances, unless the household has no earned income and all members are elderly (see OAR 461-001-0015) or individuals with a disability (see OAR 461-001-0015).

(2) The required Interim Change Report form is considered complete when it is received by the Department by the last day of the sixth month of the certification period and:

(a) The client completely and accurately answers all questions necessary to determine eligibility and benefit amounts;

(b) The client provides all required verification; and

(c) The form contains the signature of the primary person (see OAR 461-001-0015) or the *authorized representative* (see OAR 461-115-0090).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0120

### Change Report Incomplete or Not Received

If a Department branch office serving a program covered by this division of rules does not receive a completed Monthly Change Report by the last day of the payment month, the following actions are taken:

(1) In all programs except the Food Stamp program, the case is closed effective the end of the budget month (see OAR 461-001-0000).

(2) In the Food Stamp program, benefits are suspended for the *payment month* (see OAR 461-001-0000), and:

(a) If no Monthly Change Report form is received for the month of suspension, the case is closed effective the end of the month of the suspension.

(b) If a completed Monthly Change Report form is received for the month of suspension, it is used to determine eligibility and benefit level for the month following the month of suspension.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0150

### Anticipating With Periodic Review (APR); ERDC

In the ERDC program:

(1) All clients must use Anticipating with Periodic Review (APR).

(2) The length of the APR period is as follows:

(a) When the need for child care occurs within two consecutive calendar months or less, the length of the APR period will be as follows:

(A) If the child care need occurs within one calendar month, the APR period will consist of that month only.

(B) If the child care need occurs within two consecutive calendar months, the APR period will consist of those two months only.

(b) When income can be reasonably anticipated for four months or more, the APR period can be four, five, or six months.

(c) For all other cases, the APR period is three months.

(3) The Department may shorten the APR period or recalculate the anticipated future income over the remaining months when clients report income changes between eligibility periods that, after the application of OAR 461-150-0049, would cause a substantial change in the copay.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0160

### When a Re-application Form is Considered Complete or Not Received; ERDC

In the ERDC program:

(1) All clients must complete and return to a Department branch office serving a program covered by this division of rules a re-application form before benefits can be continued and a new copay established.

(2) A re-application form is considered complete when it is received by a Department branch office serving a program covered by this division of rules by the last day of the last month in the Anticipating with Periodic Review (APR) period (see OAR 461-170-0150) and:

(a) The client answers, completely and accurately, all questions necessary to determine a copay amount for the following APR period;

(b) The client provides all required verification; and

(c) The form contains the signature of the primary person (see OAR 461-001-0000) or the authorized representative (see OAR 461-115-0090).

(3) When a Department branch office serving a program covered by this division of rules receives a completed re-application form by the deadline in section (2) of this rule, the form is used to:

(a) Determine eligibility for ERDC benefits;

(b) Establish the ERDC benefit copay amount for the next APR period; and

(c) Establish the next APR period as beginning on the first day of the month following the last month of the previous APR period.

(4) When a Department branch office serving a program covered by this division of rules does not receive a completed re-application form on or before the deadline in section (2) of this rule, the case is closed effective the last day of the last month of the APR period.

(5) If the re-application form is received after the deadline in section (2) of this rule, it is treated as a new application in accordance with OAR 461-115-0050.

Stat. Auth.: ORS 411.060, 411.105, 411.111

Stats. Implemented: ORS 411.060, 411.105, 411.111

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-170-0200

### State and Federal Government-Initiated Changes

A client is not required to report any of the following changes:

(1) Periodic *cost-of-living adjustments* to the federal Black Lung Program, SSB (Social Security Benefits), SSDI, SSI, and veterans assistance under Title 38 of the United States Code.

(2) Periodic cost-of-living adjustments to ERDC, GA, OSIP, REF, SAC, SFPSS, and TANF standards.

(3) Other changes in eligibility criteria based on legislative or regulatory actions.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049, 412.089

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-175-0220

### Notice Situation; Disqualification

(1) If a benefit group (see OAR 461-110-0750) or individual is disqualified for a Food Stamp (FS) voluntary job quit or for failure to apply for or provide an SSN, pursue assets, cooperate in the JOBS, JOBS Plus, or OFSET program, or assist the state's efforts to collect support, the Department sends the following type of notice:

(a) If benefits are reduced or closed because of the disqualification:

# ADMINISTRATIVE RULES

(A) A continuing benefit decision notice (see OAR 461-001-0000) is used when changes are reported on the Monthly Change Report or Interim Change Report forms.

(B) A timely continuing benefit decision notice (see OAR 461-001-0000) is used when changes are not reported on the Monthly Change Report or Interim Change Report forms.

(b) If benefits are opened without the disqualified individual in the benefit group or if the entire benefit group is denied assistance, a basic decision notice (see OAR 461-001-0000) is used.

(2) For a JOBS, JOBS Plus, or OFSET disqualification, and for an FS voluntary job quit by an individual receiving FS benefits, the notice includes the following information:

- (a) The client action that resulted in disqualification.
- (b) The length of the minimum disqualification period.
- (c) The reduced benefit amount.
- (d) How the client may end the disqualification after the minimum period.

(3) For a voluntary job quit by an individual applying for FS benefits, the notice includes the following information:

- (a) The action that resulted in the disqualification; and
  - (b) The length of the disqualification period.
- (4) For an IPV disqualification:
- (a) A basic decision notice is required if an individual in the benefit group is disqualified for an IPV as the result of a court order or a final order from an administrative hearing.

(b) A continuing benefit decision is required if a person in the benefit group is disqualified for an IPV based on a signed waiver.

(5) For a disqualification due to being a fleeing felon or in violation of parole, probation, or post-prison supervision (under OAR 461-135-0560):

(a) A basic decision notice is required if benefits are opened without the disqualified individual in the benefit group or if the entire filing group is denied benefits.

(b) A timely continuing benefit decision notice is required if an individual in the benefit group is disqualified.

(6) The notice situation for a disqualification due to a transfer of assets is covered in OAR 461-175-0310.

Stat. Auth.: 411.060, 411.816, 412.049  
Stats. Implemented: 411.060, 411.816, 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-175-0240

### Notice Situation; Lump-Sum

(1) If a financial group (see OAR 461-110-0530) receives lump-sum income that will make the financial group ineligible or cause a reduction in benefits:

(a) The Department will deny benefits to an applicant and send a basic decision notice (see OAR 461-001-0000).

(b) If a benefit group (see OAR 461-110-0750) is receiving benefits, the Department will stop or reduce them and:

(A) If the action is based on changes reported on the Monthly Change Report or Interim Change Report form, send a continuing benefit decision notice (see OAR 461-001-0000).

(B) If the action is not based on changes reported on the Monthly Change Report or Interim Change Report form, send a timely continuing benefit decision notice (see OAR 461-001-0000).

(2) In the GA program, the decision notice described in section (1) of this rule includes:

- (a) The amount of the *countable lump-sum income*.
- (b) The calculation of this income on a monthly basis.
- (c) The length of time that the benefit group is ineligible because of receipt of lump-sum income and the amount that will be included as countable income in the first month of eligibility.

Stat. Auth.: ORS 411.060 & 411.816  
Stats. Implemented: ORS 411.060 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-175-0270

### Notice Situation; APR, MRS, SRS or TBA

(1) When a benefit group (see OAR 461-110-0750) is entered into the MRS (see OAR 461-170-0100), the Department sends a basic decision

notice (see OAR 461-001-0000) for the GA, GAM, OSIP, OSIPM, and QMB programs and a continuing benefit decision notice (see OAR 461-001-0000) for all other programs.

(2) When the Department takes action on information reported on the Monthly Change Report or Interim Change Report form, the Department sends a continuing benefit decision notice for clients in the FS, MAA, MAF, OSIP, OSIPM, QMB, REF, REFM, and TANF programs. Except in the FS program, the notice includes the amount of income used to determine the benefits or ineligibility and:

- (a) The amount of each deduction; or
- (b) The reported nonfinancial changes that affect eligibility.

(3) For all changes not reported on the Monthly Change Report or Interim Change Report form, which result in a closure or reduction in benefits, the Department sends a timely continuing benefit decision notice.

(4) For a benefit group in the MRS, when ending TANF benefits because of information acquired through the information match with the Child Support program, the Department sends a continuing benefit decision notice.

(5) When the Department changes the reporting system from one reporting system to another reporting system, the Department provides a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.816, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.111, 411.816, 412.049, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-175-0280

### Notice Situation; Failure to Submit Report for APR, MRS or SRS

(1) In the MAA, MAF, REF, and TANF programs, the Department sends a continuing benefit decision notice (see OAR 461-001-0000) when the benefit group (see OAR 461-110-0750) fails to return the Monthly Change Report by the tenth day of the payment month (see OAR 461-001-0000). The notice informs the benefit group that:

(a) The report was not received by the Department by the tenth day of the payment month.

(b) The benefit group must provide the report by the end of the payment month to receive benefits for the payment month.

(c) The benefit group will not receive the earned income deductions.

(d) If the report is not received by the Department by the last day of the payment month, benefits will be closed effective the last day of the budget month (see OAR 461-001-0000).

(2) In the ERDC program, the Department sends a continuing benefit decision notice to close benefits when the benefit group fails to return the re-application form. The case is closed on the last day of the last month of the Anticipating with Period Review (APR) period.

(3) For FS clients in the Monthly Reporting System (MRS), the Department sends a continuing benefit decision notice when the benefit group fails to return the Monthly Change Report by the 10th day of the payment month. The notice informs the benefit group that:

(a) The report was not received by the Department by the 10th day of the payment month.

(b) The benefit group has until the end of the payment month, to provide the report to receive benefits for the payment month.

(c) If the report is not received by the Department by the last day of the payment month, benefits will be suspended effective the last day of the budget month.

(d) The case will remain in suspended status for a month and then be closed.

(4) In the FS program, the Department sends a continuing benefit decision notice when a benefit group in Simplified Reporting System (SRS) fails to return the Interim Change Report by the 10th day of the sixth month of the certification period. The notice informs the benefit group that:

(a) The report was not received by the Department by the 10th day of the sixth month in the certification period.

(b) The benefit group has until the end of the sixth month of the certification period to provide the report to receive benefits for the seventh month of the certification period.

(c) If the report is not received by the Department by the last day of the sixth month of the certification period, benefits will be suspended effective the last day of the sixth month.

(d) The case will remain in suspended status for a month, then the case will be closed.



# ADMINISTRATIVE RULES

(5) In the GA, GAM, OSIP, and OSIPM programs, the Department does not send a notice if a client fails to provide a Monthly Change Report.  
Stat. Auth.: ORS 411.060 & 411.816  
Stats. Implemented: ORS 411.060 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-175-0305

### Notice Situation; Removing an Individual From a Benefit Group (EXT, FS, MAA, MAF, OHP, REF, REFM, SAC, TANF) or Need Group (ERDC)

(1) To remove an individual from a benefit group (see OAR 461-110-0750), the following notices are used:

(a) A *continuing benefit* decision notice (see OAR 461-001-0000) is used when the removal is based on information reported on Monthly Change Report or Interim Change Report form.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is used when the removal is not based on Monthly Change Report or Interim Change Report form.

(2) In the ERDC program, the Department sends a timely continuing benefit decision notice to remove an individual from the need group (see OAR 461-110-0630).

(3) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, if a child is removed from the benefit group as a result of a court order or a voluntary placement in foster care by the child's caretaker relative (see OAR 461-001-0000), a basic decision notice (see OAR 461-001-0000) is used.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-180-0005

### Effective Dates; Acting on Changes for Cases Using APR

(1) For changes reported on the re-application form, the effective date is:

(a) The first day of the next Anticipating with Periodic Review (APR) period; or

(b) If changes will end benefits, the last day of the current APR period.

(2) For changes not reported on the re-application form:

(a) For changes that require the APR period to be shortened, the effective date for the end of the APR period becomes the last day of the month in which the notice period ends. If the notice period ends the month after the change is reported, and the information results in an increase in benefits, adjust benefits for the last month of the shortened APR period.

(b) For all other changes that will cause:

(A) An increase in benefits, the effective date is the first of the month after the filing group reports the change.

(B) A decrease in benefits, the effective date is the first of the month after the notice period ends.

(c) For changes that will end benefits, the effective date is the last day of the month in which the notice period ends.

Stat. Auth.: ORS 411.060, 411.070, 411.620, 411.630, 411.632, 411.640, 411.650, 411.700 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-180-0090

### Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the EXT program, it is the first of the month following the month that MAA or MAF program eligibility ends.

(2) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the date of request. An OSIPM client who is assumed eligible under OAR 461-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following the date of request that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(3) In the QMB-BAS program, it is the first of the month after the benefit group (see OAR 461-110-0750) has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(4) In the QMB-SMB and QMB-SMF programs, it is the first of the month in which the benefit group meets all program eligibility criteria and the Department receives the required verification.

(5) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (2)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

## 461-180-0125

### Effective Dates; Reopen After Returned Mail; ERDC, FS

In the ERDC and FS programs, benefits may be reopened effective the first of the month when mail is returned by the U.S. Post Office marked "undeliverable, no forwarding address" in the following situation:

(1) Benefits ended as of the last calendar day of the prior month;

(2) The reason for the case closure was mail returned, no forwarding address; and

(3) The client contacted the Department within the first calendar month following the case closure with a new mailing address.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09

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

**Rule Caption:** Housekeeping amendments affecting OARs 582-001-0003 through 582-001-0010, and amend select definitions governing Chapter 582.

**Adm. Order No.:** VRS 4-2008(Temp)

**Filed with Sec. of State:** 12-18-2008

**Certified to be Effective:** 12-19-08 thru 6-16-09

**Notice Publication Date:**

**Rules Amended:** 582-001-0003, 582-001-0005, 582-001-0010

**Subject:** The Office of Vocational Rehabilitation Services (OVRs) of the Department of Human Services (DHS) will be invoking its authority under 34 CFR § 361.36 to implement an Order of Selection prioritizing vocational rehabilitation services for individuals with the most significant disabilities when resources are insufficient for serving all eligible individuals with disabilities seeking to be competitively employed. The emergency amendments proposed for OARs 582-001-0003 through 582-001-0010 will make non-substantive housekeeping changes as well as clarify and refine definitions for chapter 582 to facilitate immediate implementation of the Order of Selection.

**Rules Coordinator:** Sherri L. Rita—(503) 947-5227

## 582-001-0003

### Purpose for Adoption of Procedural Rules

Adoption provides for a standard procedure to be used in all matters relating to the Administrative Procedures Act, state statutes and administrative rules about vocational rehabilitation services, the federal Rehabilitation Act of 1973, as amended, the federal regulations implementing the Rehabilitation Act, and the State Plan.

Stat. Auth.: ORS 183.332 & ORS 344.530

Stats. Implemented: ORS 344.530

# ADMINISTRATIVE RULES

Hist.: VRD 25, f. & ef. 9-28-76; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 4-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09

## 582-001-0005

### General Procedures

Department of Human Services, Vocational Rehabilitation Services, chapter 582, will comply with OAR 407-001-0000 and 407-001-0005 for Notices of rulemaking.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 183.335, 183.341 & 344.530

Hist.: VRD 14, f. 10-30-73, ef. 11-25-73; VRD 25, f. & ef. 9-29-76; VRD 4-1978, f. 3-14-78, ef. 3-15-78; VRD 1-1980, f. & ef. 2-25-80; VRD 6-1981, f. & ef. 12-8-81; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 5-1997, f. & cert. ef. 11-21-97; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2006, f. & cert. ef. 5-11-06; VRS 4-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09

## 582-001-0010

### Definitions for Chapter 582

The following definitions apply to each division in chapter 582 of the Oregon Administrative Rules unless otherwise indicated:

(1) "Act" refers to the federal Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.).

(2) "Administrator" refers to the Administrator of the Office of Vocational Rehabilitation Services.

(3) "Applicant" refers to an individual who submits an application for vocational rehabilitation services in accordance with 34 CFR 361.41(b)(2).

(4) "Assessment for determining eligibility and vocational rehabilitation needs" refers to, as appropriate in each case:

(a) A review of existing data to determine if an individual is eligible for vocational rehabilitation services; and to assign priority for an order of selection if in effect; and

(b) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(c) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment:

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements: Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection for the individual; and Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(d) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(e) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(5) "Assistive technology device" refers to any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(6) "Assistive technology service" refers to any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(a) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(7) "CFR" refers to the Code of Federal Regulations.

(8) "Client Assistance Program" or "CAP" refers to a federally-funded program authorized under 34 CFR 370 that is independent of OVRs and whose purpose is to provide information, advocacy, and legal representation to individuals seeking OVRs services.

(9) "Client's Representative" refers to any person identified by the client as being authorized to speak or act on behalf of the client or to assist the client in any matter pertaining to services of OVRs, unless a representative has been appointed by a court to represent the client, in which case the court-appointed representative is the client's representative.

(10) "Community Rehabilitation Program" or "CRP" refers to:

(A) A program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs, including technicians for assessment tests.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in subsections (A) through (P) of this definition, including vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS plans.

(b) For the purposes of this definition, the word program means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions. It does not include the prospective employer of the client.

(11) "Comparable services and benefits" refers to:

(a) Services and benefits that are:

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with 34 CFR 361.53; and

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(C) Commensurate to the services that the individual would otherwise receive from OVRs.

(b) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(12) "Competitive employment" refers to work:

(a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(13) "DHS" refers to the Oregon Department of Human Services.

(14) "Eligible individual" refers to an applicant for vocational rehabilitation services who meets the eligibility requirements of 34 CFR 361.42(a).

(15) "Employment outcome" refers to, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in OAR 582-001-0010(12), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(16) "Extended employment" refers to work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(17) "Extended services" refers to ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part and 34 CFR part 363 after an individual with a most significant disability has made the transition from support provided by OVRs.

(18) "Extreme medical risk" refers to a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(19) "Family member," for purposes of receiving vocational rehabilitation services in accordance with 34 CFR 361.48(i), refers to an individual:

(a) Who either:

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual;

and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(20) "Impartial hearing officer" refers to an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education) — an individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer;

(b) Is not a member of the State Rehabilitation Council for OVRs;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(21) "Individual with a disability" refers to an individual:

(a) Who has a physical or mental impairment; and

(b) Whose impairment constitutes or results in a substantial impediment to employment; and

(c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(22) "Individual with a most significant disability" refers to an eligible individual who:

(a) Has a severe mental or physical impairment that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(23) "Individual with a significant disability" refers to an eligible individual who does not qualify as an individual with a most significant disability as defined at OAR 582-001-0010(22); and

(a) The individual is currently receiving Social Security Income or Social Security Disability Insurance payments; or

(b) The individual:

(A) Has a severe mental or physical impairment that seriously limits one functional capacity (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(24) "Integrated setting":

(a) With respect to the provision of services, refers to a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(b) With respect to an employment outcome, refers to a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(25) "Maintenance" refers to monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are 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 individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(26) "Mediation" refers to the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified and impartial mediator as defined in 34 CFR 361.5(b)(43).

(27) "OAR" refers to the Oregon Administrative Rules.

(28) "Ongoing support services," as used in the definition of "Supported employment"

(a) Refers to services that are:

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by OVRs of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by OVRs from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(b) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(c) Consist of:

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;



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(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in 34 CFR 361.48; or

(I) Any service similar to the foregoing services.

(29) "ORS" refers to the Oregon Revised Statutes.

(30) "OVRs" refers to the Office of Vocational Rehabilitation Services.

(31) "Parent or Guardian" refers to a person or persons having legal responsibility for the overall welfare and well-being of a client under age 18 or a client who, if over age 18, is considered legally incompetent.

(32) "Personal assistance services" refers to a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

(33) "Qualified Personnel" means an individual licensed or certified by the state or an individual who maintains an equivalent licensure or certification from another state to make the diagnosis of an applicant's impairment.

(34) "Physical and mental restoration services" refers to:

(a) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(b) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Drugs and supplies;

(g) Prosthetic and orthotic devices;

(h) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(o) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(p) Other medical or medically related rehabilitation services.

(35) "Physical or mental impairment" refers to:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(36) "Post-employment services" refers to one or more of the services identified in 34 CFR 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(37) "Provider of community rehabilitation services" refers to any CRP, business, or independent contractor that is paid by OVRs to provide any service listed in OAR 582-001-0010(10).

(38) "Qualified and impartial mediator" refers to an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education) — an individual serving as a mediator is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by a public agency to serve as a mediator;

(b) Is not a member of the State Rehabilitation Council for OVRs;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(e) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(39) "Rehabilitation engineering" refers to the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(40) "Rehabilitation technology" refers to the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(41) "Severe mental or physical impairment" refers to the use of this term in the federal Rehabilitation Act of 1973, as amended.

(42) "State plan" refers to the State plan for vocational rehabilitation services submitted by OVRs under 34 CFR 361.10.

(43) "Substantial impediment to employment" refers to a physical or mental impairment that (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(44) "Supported employment" refers to:

(a) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from OVRs and extended services after transition as described in OAR 582-001-0010(17) to perform this work; or

(b) Transitional employment, as defined OAR 582-001-0010(47), for individuals with the most significant disabilities due to mental illness.

(45) "Supported employment services" refers to ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by OVRs:

(a) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(46) "Transition services" refers to a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(47) "Transitional employment," as used in the definition of "Supported employment," refers to a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(48) "Transportation" refers to travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a

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vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(49) "Vocational rehabilitation services":

(a) If provided to an individual, refers to those services listed in 34 CFR 361.48; and

(b) If provided for the benefit of groups of individuals, also refers to those services listed in 34 CFR 361.49.

(50) "Vocational rehabilitation training" means skill training in which the basis and focus of the training are individualized or customized. Vocational rehabilitation training may include focus on disability related issues as those issues impact the skills training. Vocational rehabilitation training can include, but is not limited to:

(a) Supported employment;

(b) Disability and related Skills training;

(c) On the job training;

(d) One-on-one specialized business training - training provided to individuals who are working to establish their own business;

(e) Customized training — training offered by an employer to a group of individuals for the purpose of training and possibly hiring the individuals.

(51) "Vocational training" means skills training for a specific occupation.

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

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530, 344.550, 344.560, 344.570 & 344.590

Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05; 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 4-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09

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**Rule Caption:** Amend OAR 582-100-0040, relating to Order of Selection, to clarify priority changes.

**Adm. Order No.:** VRS 5-2008(Temp)

**Filed with Sec. of State:** 12-18-2008

**Certified to be Effective:** 12-19-08 thru 6-16-09

**Notice Publication Date:**

**Rules Amended:** 582-100-0040

**Subject:** The Office of Vocational Rehabilitation Services (OVRs) of the Department of Human Services (DHS) will be invoking its authority under 34 CFR § 361.36 to implement an Order of Selection prioritizing vocational rehabilitation services for individuals with the most significant disabilities when resources are insufficient for serving all eligible individuals with disabilities seeking to be competitively employed. An error in OAR 582-100-0040(5)(b)(B) must be immediately corrected in order to accurately set forth the criteria for qualifying for Priority Two.

**Rules Coordinator:** Sherri L. Rita—(503) 947-5227

### 582-100-0040

#### Order of Selection for Services

(1) If the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply, the Administrator of OVRs shall invoke an Order of Selection.

(2) During an Order of Selection, OVRs shall continue to provide all needed services to any individual who is in active plan status prior to the effective date of the order of selection, including clients receiving or subsequently eligible for post-employment services as described at OAR 582-001-0010(35).

(3) During an Order of Selection, OVRs shall continue to provide services needed to determine eligibility.

(4) As part of the eligibility determination, OVRs shall determine the priority category in which eligible clients qualify.

(5) Priority of Service Order. Open plans implemented before the effective date of an Order of Selection and individuals needing Post Employment services shall not be impacted. The following priorities shall be applied statewide:

(a) Priority One. Eligible persons who meet all three of the following criteria shall be served first, in the order of each individual's date of application:

(A) The individual is classified with a Most Significant Disability consistent with OAR 582-001-0010(22); and

(B) The individual has a severe mental or physical impairment that seriously limits three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(C) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(b) Priority Two. Eligible persons not qualifying as Priority One who meet all three of the following criteria shall be served second, in the order of each individual's date of application:

(A) The individual is classified with a Most Significant Disability consistent with OAR 582-001-0010(22); and

(B) The individual has a severe mental or physical impairment that seriously limits two functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(C) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(c) Priority Three. Eligible persons classified with a significant disability consistent with OAR 582-001-0010(23) shall be served third, in the order of each individual's date of application;

(d) Priority Four. All other eligible persons shall be served fourth in the order of each individual's date of application.

(6) The count of functional capacities to determine whether an individual has a most significant disability consistent with OAR 582-001-0010(22) and to determine the priority of the individual for an Order of Selection under 582-100-0040 shall be based a count of the following seven items only: mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills. Sub-categories within these seven capacities are not counted for this determination.

Stat. Auth.: ORS 344.540

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.710 - 344.730

Hist.: VRD 3-1980, f. & ef. 7-2-80; VRD 3-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05; VRS 5-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09

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

**Rule Caption:** Terminology/process changes; payments re: public entities; DRA requirements; CMS Moratorium language and MMIS.

**Adm. Order No.:** DMAP 43-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 12-28-08

**Notice Publication Date:** 7-1-2008

**Rules Adopted:** 410-138-0005, 410-138-0007, 410-138-0009

**Rules Amended:** 410-133-0040, 410-133-0090, 410-133-0100, 410-133-0140, 410-133-0220, 410-133-0280, 410-138-0000, 410-138-0020, 410-138-0080, 410-138-0300, 410-138-0320, 410-138-0380, 410-138-0500, 410-138-0520, 410-138-0560, 410-138-0600, 410-138-0620, 410-138-0680, 410-138-0700, 410-138-0720, 410-138-0740, 410-138-0780

**Subject:** July bulletin: DMAP filed Notice of Proposed Rulemaking Hearing to change terminology and other process aspects related to MMIS for rules 410-133-0040, 410-133-0090, 410-133-0100, 410-133-0140, 410-133-0220, 410-133-0280.

August bulletin: With the Temporary filing (DMAP 28-2008) effective July 1 through December 28, 2008, DMAP amended rules 410-133-0090, 410-133-0100, and 410-133-0220 in the SBHS program and 410-138-0080, 410-138-0380, 410-138-0560, 410-138-0680, 410-138-0740 and 410-138-0780 in the TCM program for coordination and consistency of the payment obligations for federal financial participation cost sharing between DHS and public providers. Not all public providers are affected by these rules. In certain situations established as part of a contract or rule, public providers are responsible for payment of public funds (called the local match) to match federal funds that reimburse covered services. These rules inform current and potential public providers that participate in cost sharing programs about the public entity payment requirements for local match funds. Because Centers for Medicare and Medicaid Services (CMS) reinterpretation of 42 CFR 433.51 and

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42 CFR 433 Subpart B, the temporary rules were necessary to comply with these requirements.

August bulletin: With the Notice of Proposed Rulemaking Hearing DMAP filed Notice to permanently amend 410-133-0090, 410-133-0100, and 410-133-0220 in the SBHS program and 410-138-0080, 410-138-0380,

410-138-0560, 410-138-0680 410-138-0740 and 410-138-0780 in the TCM program to be effective on or before December 28, 2008.

November bulletin: With temporary filing DMAP 32-2008 (T), effective September 22 through December 28, 2008, new information prompted DMAP to adopt 410-138-0005, 410-138-0007, 410-138-0009, further amend rules 410-133-0090, 410-133-0220 in the SBHS program and 410-138-0080, 410-138-0380, 410-138-0560, 410-138-0680, 410-138-0740 and 410-138-0780 in the TCM program to supersede the July 1, 2008 temporary rules.

DMAP also temporarily revised 410-138-0000, 410-138-0020, 410-138-0300, 410-138-0320, 410-138-0500,

410-138-0520, 410-138-0600, 410-138-0620, 410-138-0700, and 410-138-0720 in the TCM program. DMAP filed these emergency rules due to the Centers for Medicare and Medicaid Services (CMS) reinterpretation of a federal regulation regarding the timing for payments received by DMAP for federal financial participation for cost sharing programs for the providers' non-federal matching share portion. The rules were amended for coordination and consistency of the payment obligations between DHS and public providers responsible for the local match or non federal matching funds allowable to match federal funds that reimburse covered services.

The TCM program also includes CMS Moratorium language exceptions for definitions, requirements and policies for Case Management/Targeted Case management services provided, that remain in effect under this Moratoria in compliance with the Deficit Reduction Act of 2005.

Temporary rules 410-133-0090 and 410-133-0220 were further revised to define payment for the leveraging process in the interim or delay of the Medicaid Management Information System (MMIS). The text is updated to clarify MMIS requirements and process.

November bulletin: DMAP filed Notice to permanently adopt 410-138-0005, 410-138-0007, 410-138-0009, permanently amend rules 410-133-0090, 410-133-0220 in the SBHS program and 410-138-0000,

410-138-0020, 410-138-0080, 410-138-0300, 410-138-0320, 410-138-0380, 410-138-0500, 410-138-0520,

410-138-0560, 410-138-0600, 410-138-0620, 410-138-0680, 410-138-0700, 410-138-0720, 410-138-0740 and 410-138-0780 in the TCM program to be effective on or before December 28, 2008.

As part of the complete reorganization of the TCM administrative rules, DMAP consolidated language related to the issues stated above making the rules more transparent and user friendly for DMAP, providers and the public. Text is revised to improve readability and take care of housekeeping corrections.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-133-0040

#### Definitions

(1) Adapted Vehicle — Vehicle specifically designed or modified to transport passengers with disabilities.

(2) Adequate Recordkeeping — In addition to General Rules OAR 410-120-0000, Definitions and 410-120-1360, Requirements for financial, clinical, and other records, documentation in the student's educational record and on the Individualized Education Plan (IEP) or Individualized Family Service Plan( IFSP) showing the necessary and appropriate health services provided to the student detailed in the Department of Human Services (DHS) School-Based Health Services (SBHS) rules (See Definitions and OAR 410-133-0320).

(3) Agent — means a third party or organization that contracts with a Provider, allied agency, or Prepaid Health Plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include Billing Agents, claims clearing-houses, vendors, billing services, service bureaus, and accounts receivable

management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a Provider, including the following: an employer of a Provider, if a Provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a Provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a Provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(4) Allied Agency — Local and regional governmental agencies and regional authorities that contract with DHS to provide the deliver of services to covered individuals. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, public schools, education service districts (ESDs), developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(5) Assessment — A process of obtaining information to determine if a student qualifies for or continues to qualify for Division of Medical Assistance Programs (DMAP) covered school-based health services (SBHS).

(6) Assistive Technology Service — Services provided by medically qualified staff within the scope of practice under State law with training and expertise in the use of assistive technology (see 410-133-0080 Coverage and 410-133-0200 Not Covered Services in these rules).

(7) Audiologist — A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA) and meet the requirements in 42 CFR 440.110.

(8) Audiology — Assessment of children with hearing loss; determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for restoration or rehabilitation due to hearing disorders; provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the child's need for individual amplification; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services.

(9) Automated Voice Response (AVR) — A computer system that provides information on clients' current eligibility status from DMAP by computerized phone or Web-based response.

(10) Benefit Package — The "package" of covered health care services for which the Medicaid-eligible student is eligible. (See General Rules OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System)

(11) Billing Agent or Billing Service — Third party or organization that contracts with a Provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the Provider. Also see definition for Electronic Data Interchange (EDI) Submitter

(12) Billing Provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from DMAP on behalf of a performing Provider and has been delegated the authority to obligate or act on behalf of the performing Provider. (See DHS Admin Services and Director's Office Rules, chapter 407 division 120 Provider Rules, General Rules OAR 410-120-1260 and SBHS Rules 410-133-0140.)

(13) Billing Time Limit — Refers to the rules concerning the period of time allowed to bill services to the Division of Medical Assistance Programs (DMAP) see Department Provider Rules 407-120-030(7) Timely Submission of Claim or Encounter Data and DMAP General Rules Timely Submission of Claims OAR 410-120-1300. In general, those rules require initial submission within 12 months of the date of service or 18 months for resubmission.

(14) Centers for Medicare and Medicaid Services (CMS) — The federal regulatory agency for Medicaid programs.

(15) CMS-1500 — The standard federal billing form used to bill medical services.

(16) Certification — See "licensure."

(17) Children's Health Insurance Program (CHIP) — A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered in Oregon by the Department of Human Services (DHS) Division of Medical Assistance Programs (DMAP).

(18) Clinical Social Work Associate (CSWA) — A person working toward LCSW licensure under the supervision of a LCSW for two years of



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post masters clinical experience and is licensed by the State Board of Clinical Social Workers to practice in Oregon.

(19) Coordinated Care — Services directly related to covered school-based health services (SBHS) specified in the individualized education program (IEP) or individualized family service plan (IFSP), performed by medically qualified staff, and allowed under 410-133-0080, Coverage to manage integration of those health services in an education setting. Coordinated Care includes the following activities:

(a) Conference — The portion of a conference in a scheduled meeting, between medically qualified staff and interested parties, to develop, review, or revise components of school-based health services provided to a Medicaid-eligible student for the purpose to establish, re-establish or terminate a Medicaid covered health service on a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP); or to develop, review, or revise components of a health service currently provided to a Medicaid-eligible student to determine whether or not those covered health services will continue to be specified on an individualized education program (IEP) or individualized education program (IFSP).

(b) Consultation — performed by medically qualified staff within the scope of practice providing technical assistance to or conferring with, special education providers, physicians, and families to assist them in providing a covered health service for Medicaid-eligible students related to a specific health service and health service goals and objectives in the individualized education program (IEP) or individualized family service plan (IFSP).

(c) Physician coordinated care — Meeting or communication with a physician in reference to oversight of care and treatment provided for a health service specified on a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP).

(20) Cost Determination — The process of establishing an annual discipline fee (cost rate), based on the prior-year actual audited costs, used by an EA for the purpose of billing for covered school-based health services (see 410-133-0245 in these rules).

(21) COTA — Certified Occupational Therapy Assistant — A person who is licensed as an occupational therapy assistant assisting in the practice of occupational therapy under the supervision of a licensed occupational therapist.

(22) Covered Entity — means a health plan, health care clearing house, health care Provider, or Allied Agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the Nation Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414. When a school provides covered SBHS services in the normal course of business and bills Medicaid for reimbursed covered transactions electronically in connection with that health care such as electronic claims, it is then a covered entity and must comply with the HIPAA Administrative Simplification Rules for Transactions and Code sets and Identifiers with respect to its transactions.

(23) Current Procedural Terminology (CPT) — The American Medical Association's Current Procedural Terminology is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers. See General Rules (OAR 410-120-0000 Definitions).

(24) Data Transmission — means the transfer or exchange of data between the Department and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(25) Delegated Health Care Aide — A non-licensed person trained and supervised by a licensed Registered Nurse (RN) or Nurse Practitioner (NP) to perform selected tasks of nursing care specific to the Medicaid-eligible student identified in the nursing plan of care pursuant to the individualized education program/individualized family service plan (IEP/IFSP).

(26) Delegation of Nursing Task — A selected nursing task that is performed by an unlicensed person, trained and monitored by a licensed Registered Nurse (RN). Delegation and supervision of selected nursing tasks must comply with Oregon Administrative Rules (OARs), Board of Nursing, Chapter 851 Division 45 and 47. A school medical (SM) Provider must maintain documentation of the actual delegation, training, supervision and provision of the nursing service billed to Medicaid.

(27) Department of Human Services (DHS) — The Department or DHS or any of its programs or offices means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former

Office of Medical Assistance Programs or OMAP is used in contract or administrative rule, it shall mean the Division of Medical Assistance Programs (DMAP).

(28) Diagnosis Code — As identified in the International Classification of Diseases 9th Revision, Clinical Modification (ICD-9-CM), the primary Diagnosis Code is shown in all billing claims, unless specifically excluded in individual Provider rule(s). Where they exist, Diagnosis Codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(29) Direct Services — Face-to-face delivery of health services between the medically qualified staff who is the service provider and a Medicaid-eligible student.

(30) Division of Medical Assistance Programs (DMAP) — An office within DHS; DMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP- Title XXI), and several other programs.

(31) Early Intervention/Early Childhood Special Education (EI/ECSE) — A program designed to address the unique needs of a child age 0-3 years (EI) and preschool children ages 3-5 years (ECSE) with a disability.

(32) Educational Agency (EA) — For purposes of these rules, any public school, school district, Education Service District (ESD), state institution, or youth care center providing educational services to students, birth to age 21 through grade 12, that receives federal or state funds either directly or by contract or subcontract with the Oregon Department of Education (ODE).

(33) Education Records — Those records, files, documents and other materials which contain information directly related to a student and maintained by an Education Agency (EA) or by a person acting for such EA as set forth in OAR 581-021-0220. (A school-based health services (SBHS) Provider is required to keep and maintain supporting documentation for Medicaid reimbursed school-based health services for a period of seven (7) years; this documentation is part of the student's education record but may be filed and kept separately by school health professionals.) See 410-133-0320 Documentation and Recordkeeping Requirements in these rules.

(34) Education Service District (ESD) — An education agency established to offer a resource pool of cost-effective, education-related, physical or mental health-related, state-mandated services to multiple local school districts within a geographic area described in ORS 334.

(35) Electronic Data Interchange (EDI) — The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Department designates for EDI transactions. For purposes of these rules (OAR 407-120-0100 through 407-120-0200), EDI does not include electronic transmission by web portal.

(36) EDI Submitter — An Individual or an entity authorized to establish an electronic media connection with DHS to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner. Also see definition for Billing Agent in these rules.

(37) Electronic Verification System (EVS) — Eligibility information that have met the legal and technical specifications of DMAP in order to offer eligibility information to enrolled Providers of DMAP.

(38) Eligibility for Special Education Services — A determination by a designated education agency (EA), through a team, that a child meets the eligibility criteria for early intervention (EI), early childhood special education (ECSE) or special education as defined in ORS 343 and OAR chapter 581, division 15.

(39) Evaluation — Evaluations are procedures performed by medically qualified staff to determine whether a Medicaid-eligible student is disabled and the nature and extent of the health services the student needs under the Individuals with Disabilities Education Act (IDEA) and in accordance with Oregon Department of Education OAR chapter 581 division 15. The Department of Human Services (DHS) can only reimburse evaluations that establish, re-establish or terminate a school-based health services (SBHS) covered healthservice on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) under the Individuals with Disabilities Education Act (IDEA).

(40) Federal Medical Assistance Percentage (FMAP) — The percentage of federal matching dollars for qualified state medical assistance program expenditures.

(41) Healthcare Common Procedure Coding System (HCPCS) — A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I -American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National

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codes, and Level III — Local codes. DMAP uses HCPCS codes. See General Rules (OAR 410-120-1280 Billing).

(42) Health Assessment Plan (nursing) — Systematic collection of data for the purpose of assessing a Medicaid-eligible student's health or illness status and actual or potential health care needs in the educational setting. Includes taking a nursing history, and an appraisal of the student's health status through interview, information from the family and information from the student's past health or medical record. A SBHS Provider is required to keep and maintain the health assessment plan and supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP) for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals. (See 410-133-0320 Documentation and Recordkeeping Requirements.)

(43) Health Care Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the health care practitioner's license and/or certification standards established by their health licensing agency. Medical provider and health care practitioner are interchangeable terms. See Definition (48) Medical Provider.

(44) Health Services — Medical evaluation services provided by a physician for diagnostic and evaluation purposes for a Medicaid-eligible student that is found eligible under the Individuals with Disabilities Education Act (IDEA) and leads to an established Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), physical or mental health evaluations, and assessment or treatment performed by medically qualified staff to achieve the goals set forth in a Medicaid-eligible student's IEP or IFSP. A covered Health Service is one that is covered by the medical assistance program and is provided to enable the Medicaid-eligible student to benefit from a special education program (age 3-21) or to achieve developmental milestones in an early intervention program (age 0-3). "Health services" are synonymous with "medical services" in these rules. To determine whether a health service specified on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) is a covered School-Based Health Service (SBHS) (See 410-133-0080 Coverage and 410-133-0200 Not Covered Services).

(45) Health Services Commission (HSC) — An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be serviced.

(46) ID Number — A number issued by the Department of Human Services (DHS) used to identify Medicaid-eligible students. This number may also be referred to as recipient identification number; prime number; client medical ID Number or medical assistance program ID number.

(47) Individuals with Disabilities Education Act (IDEA) — The federal law ensuring the rights of children with disabilities to a "free and appropriate education" (FAPE).

(48) Individualized Education Plan (IEP) — A written statement of an educational program for a child with a disability which is developed, reviewed, or revised in a meeting in accordance with Oregon Department of Education OAR chapter 581, division 15. When an IEP is used as a prescription for Medicaid reimbursement for covered School-Based Health Services (SBHS), it must include: type of Health Service, amount, duration and frequency for the service provided. In order to bill Medicaid for covered Health Services they must be delivered by or under the supervision of medically qualified staff and must be recommended by a physician or appropriate health care practitioner acting within the scope of practice. See definition medically qualified staff.

(49) Individualized Family Service Plan (IFSP) — A written plan of Early childhood Special Education (ECSE) services, Early Intervention (EI) services, and other services developed in accordance with criteria established by the Oregon Department of Education (ODE) for each child (age's birth to 5 years) eligible for IFSP services. The plan is developed to meet the needs of a child with disabilities in accordance with requirements and definitions in OAR Chapter 581, division 15. When an IFSP is used as a prescription for Medicaid reimbursement for SBHS covered services, it must include: type of Health Service, amount, duration and frequency for the service provided. In order to bill Medicaid for covered Health Services they must be delivered by or under the supervision of medically qualified staff and must be recommended by a physician or appropriate health care practitioner acting within the scope of practice. See definition medically qualified staff.

(50) Individualized Education Plan/Individualized Family Service Plan (IEP/IFSP) Team — A group of teachers, specialists, and parents

responsible for determining eligibility, developing, reviewing, and revising an IEP or IFSP in compliance with OAR chapter 581, division 15.

(51) Licensed Clinical Social Worker (LCSW) — A person licensed to practice clinical social work pursuant to State law.

(52) Licensed Physical Therapist Assistant (LPTA) — A person licensed to assist in the administration of physical therapy, solely under the supervision and direction of a physical therapist.

(53) Licensed Practical Nurse (LPN) — A person licensed to practice under the direction of a licensed professional within the scope of practice as defined by State law.

(54) Licensure — Documentation from state agencies demonstrating that licensed or certified individuals are qualified to perform specific duties and a scope of services within a legal standard recognized by the licensing agency. In the context of health services, licensure refers to the standards applicable to health service providers by health licensing authorities. For health services provided in the State of Oregon, licensure refers to the standards established by the appropriate State of Oregon licensing agency.

(55) Medicaid-eligible student — The child or student who has been determined to be eligible for Medicaid health services by the Department of Human Services. For purposes of this rule, Medicaid-eligible student is synonymous with "Recipient" or "Oregon Health Plan (OHP) Client". For convenience, the term student used in these rules applies to both students covered by an Individualized Education Program (IEP) and children covered by an Individualized Family Service Plan (IFSP). Also for purposes of this rule, students or children whose eligibility is based on the Children's Health Insurance Program (CHIP) shall be referred to as Medicaid-eligible students.

(56) Medical Assistance Program — A program for payment of health services provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the Oregon Health Plan (OHP) Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP), of the Department of Human Services (DHS) also termed Department.

(57) Medical Management Information System (MMIS) — A data collection system for processing paper and electronic claims for payment of health services provided to Medicaid-eligible recipients.

(58) Medical Provider — An individual licensed by the State to provide health services within their governing body's definitions and respective scope of practice. Medical provider and health care practitioner are interchangeable terms.

(59) Medical Services — The care and treatment provided by a licensed health care practitioner to prevent, diagnose, treat, correct or address a medical problem; whether physical, mental or emotional. For the purposes of these rules, this term shall be synonymous with Health Services or health-related services listed on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), as defined in OAR chapter 581, division 15. Not all health-related services listed on an IEP or IFSP are covered as SBHS. See 410-133-0080 Coverage and 410-133-0200 Not Covered Services.

(60) Medical Transportation — Specialized transportation in a vehicle adapted to meet the needs of passengers with disabilities transported to and from a SBHS covered service.

(61) Medically Qualified Staff:

(a) Staff employed by and/or through contract with an EA; and

(b) Licensed by the State to provide health services in compliance with State law defining and governing the scope of practice, described further in OAR 410-133-0120.

(62) Medication Management — A task performed only by medically qualified staff, pursuant to a student's Individualized Education Program/Individualized Family Service Plan (IEP/IFSP), which involves administering medications, observing for side effects, and monitoring signs and symptoms for medication administration.

(63) National Provider Identification (NPI) — Federally directed Provider number mandated for use on Health Insurance Portability and Accountability Act (HIPAA) covered transactions; individuals, Provider organizations, and subparts of Provider organizations that meet the definition of health care Provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(64) "Necessary and Appropriate Health Services" — Those health services described in a Medicaid-eligible student's IEP or IFSP which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

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(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Medicaid-eligible student or Provider of the service; and

(d) The most cost-effective of the alternative levels of Health Services, which can safely be provided to a Medicaid-eligible student.

(65) Nursing Diagnosis and Management Plan — A written plan that describes a Medicaid-eligible student's actual and anticipated health conditions that are amenable to resolution by nursing intervention.

(66) Nursing Plan of Care — Written guidelines made a part of and attached to the Individualized Education Program (IEP) or individualized Family Service Plan (IFSP) that identify specific health conditions of the Medicaid-eligible student, and the nursing regimen that is "necessary and appropriate" for the student. Development and maintenance of this plan includes establishing student and nursing goals, and identifying nursing interventions (including location, frequency, duration and delegation of care) to meet the medical care objective identified in their IEP or IFSP, see Oregon State Board of Nursing Practice Act, Division 47. The SBHS Provider is responsible for developing the Nursing Plan of Care and is required to keep and maintain a copy of the Nursing Plan of Care as supporting documentation for Medicaid reimbursed health services. (See definition "Education records".)

(67) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to State law.

(68) Nursing Services — Services provided by a nurse practitioner (NP), registered professional nurse (RN), a licensed practical nurse (LPN) or delegated health care aide, within the scope of practice as defined by State law. Nursing services include preparation and maintenance of the health assessment plan, nursing diagnosis and management plan, nursing plan of care, consultation, and coordination and integration of health service activities, as well as direct patient care and supervision.

(69) Observation — Surveillance or visual monitoring performed by medically qualified staff as part of an evaluation, assessment, direct service, or care coordination for a necessary and appropriate Medicaid covered health service specified on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) to better understand the child's medical needs and progress in their natural environment. An observation by itself is not billable.

(70) Occupational Therapist (OT) — A person licensed by the State Board of Examiners for Occupational Therapy.

(71) Occupational Therapy — Assessing, improving, developing, or restoring functions impaired or lost through illness, injury or deprivation, to improve the ability to perform tasks for independent functioning when functions are lost or impaired, preventing through early intervention, initial or further impairment or loss of function. Obtaining and interpreting information, coordinating care, and integrating Necessary and Appropriate occupational therapy services relative to the Medicaid-eligible student.

(72) Oregon Department of Education (ODE) — The state agency that provides oversight to public educational agencies for ensuring compliance with Federal and State laws relating to the provision of services required by the individuals with disabilities education act (IDEA).

(73) Orientation and Mobility Training — Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community. These services are not covered under School-Based Health Services (SBHS).

(74) Performing Provider — A person, Agent, business, corporation, clinic, group, institution, or other entity that is the Provider of a service or item with the authority to delegate fiduciary responsibilities to a Billing Provider, also termed Billing Agent, to obligate or act on the behalf of the Performing Provider regarding claim submissions, receivables, and payments relative to the Medical Assistance Program. For the purposes of these school-based health services (SBHS) rules, the School Medical (SM) Provider is the Performing Provider.

(75) Physical Therapist — A person licensed by the relevant State licensing authority to practice physical therapy (See OAR Chapter 848 Division 10 Licensed Physical Therapists and Licensed Physical therapist Assistants; Division 40 Standards For Authorization To Provide Physical therapy Services OAR 848-040-0117; and 848-040-0105 General Standards for practice

(76) Physical Therapy — Assessing, preventing or alleviating movement dysfunction and related functional problems. Obtaining and interpreting information, coordinating care, and integrating Necessary and

Appropriate physical therapy services relative to the student receiving treatments.

(77) Prime Number — See definition of ID Number.

(78) Prioritized List of Health Services — Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of Ancillary Services and preventative Services and the HSC practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by the HSC. The Prioritized List governs medical assistance programs' health services and Benefit Packages pursuant to General Rules OAR 410-120-0000 et seq., and 410-141-0480 through 410-141-0520 (for the listing of condition and treatment pairs).

(79) Procedure Code — See definition of HCPC healthcare common procedure code.

(80) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing Provider, or bills, obligates and receives reimbursement on behalf of a performing Provider of services, also termed a Billing Provider (BP). The term "Provider" refers to both Performing Providers and Billing Providers (BP) unless otherwise specified. Payment can only be made to DMAP-enrolled Providers who have by signature on the Provider enrollment forms and attachments, agreed to provide services and to bill in accordance with the General Rules 410-120-1260, and the School-Based Health Services (SBHS) rules 410-133-0140. If a Provider submits claims electronically, the Provider must become a Trading Partner with the Department of Human Services (DHS) and comply with the requirements of the Electronic Data Interchange (EDI) rules pursuant to OAR 407-120-0100 through 407-120-0200.

(81) Provider Enrollment Agreement — An agreement between the Provider and the Department that sets forth the conditions for being enrolled as a Provider with the Department and to receive a Provider number in order to submit claims for reimbursement for covered SBHS provided to Medicaid-eligible students. Payment can only be made to DMAP-enrolled Providers who have by signature on the Provider enrollment forms and program applicable attachments agree to provide services and to bill in accordance with DHS Provider Rules chapter 407 division 120 and DMAP General Rules chapter 410 division 120, and these SBHS rules. Also see definitions for Trading Partner and Trading Partner Agreement in these rules.

(82) Psychiatrist — A person licensed to practice medicine and surgery in the state of Oregon and possesses a valid license from the Oregon Licensing Board for the Healing Arts.

(83) Psychologist — A person with a doctoral degree in psychology and licensed by the State Board of Psychologist Examiners See 858-010-0015.

(84) Psychologist Associate — A person who does not possess a doctoral degree that is licensed by the Board of Psychologists Examiners, to perform certain functions within the practice of psychology under the supervision of a psychologist. See 858-050-0100 through 858-050-0150. An exception would be psychologist associate with the authority to function without immediate supervision, see OAR 858-050-0150.

(85) Recordkeeping Requirements — A School-Based Health Services (SBHS) School Medical (SM) Provider is required to keep and maintain the supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals (See 410-133-0320).

(86) Re-evaluation — Procedure used to measure a Medicaid-eligible student's health status compared to an initial or previous evaluation, or to determine whether the student continues to be eligible for Medicaid covered health services under the Individuals with Disabilities Education Act (IDEA).

(87) Regional Program — Regional program services are provided on a multi-county basis, under contract from the Oregon Department of Education (ODE) to eligible children (birth to 21) visually impaired, hearing impaired, deaf-blind, autistic, and/or severely orthopedically impaired. A Regional program may be reimbursed for covered health services it provides to Medicaid-eligible students through the School Medical (SM) Provider (e.g., public school district or ESD) that administers the program.

(88) Registered Nurse (RN) — A person licensed and certified by the Oregon Board of Nursing to practice as a registered nurse pursuant to State law.



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(89) **Rehabilitative Services** — For purposes of the School-Based Health Services (SBHS) program, any health service that is covered by the Medical Assistance Program and that is a medical, psychological or remedial health service recommended by a physician or other licensed health care practitioner within the scope of practice under State law, and provided to a Medicaid-eligible student pursuant to an Individualized Education Program/Individualized Family Service Plan (IEP/IFSP) under the Individuals with Disabilities Education Act (IDEA), for reduction, correction, stabilization or functioning improvement of physical or mental disability of a Medicaid-eligible student (See 410-133-0060).

(90) **Related Services** — For purposes of this rule, related services as listed on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) may include: transportation and such developmental, corrective and other supportive services (e.g., speech language, audiology services, psychological services, physical therapy, occupational therapy, social work services in schools, and nursing services) as are required to assist a child or student with a disability to benefit from special education; and includes early identification and assessment of disabling conditions in children.

**NOTE:** Not all "related services" are covered for payment by Medicaid. To determine whether a particular related service is a covered health service for a Medicaid-eligible student (see OAR 410-133-0080, Coverage and 410-133-0200, Not Covered Services).

(91) **School-Based Health Services (SBHS)** — Health Services provided in the educational setting, meeting the requirements of these rules, and applicable federal and state laws and rules.

(92) **School Medical (SM) Provider** — An enrolled provider type established by the Division of Medical Assistance Programs (DMAP) to designate the provider of School-Based Health Services eligible to receive reimbursement from DMAP. See Provider Rules OAR 407-120-0300 through 407-120-0380, General Rules 410-120-1260, and 410-133-0140 (School Medical (SM) Provider Enrollment Provisions).

(93) **Screening** — A limited examination to determine a Medicaid-eligible student's need for a diagnostic medical evaluation. See OAR 410-133-0200 (Not Covered Services).

(94) **Special Education Services** — Specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, special schools, and other settings.

(95) **Speech Language Pathology Assistant (SLPA)** — A person who is licensed by the Oregon State Board of Examiners for Speech Pathology and Audiology and provides speech-language pathology services under the direction and supervision of a speech-language pathologist licensed under ORS 681.250.

(96) **Speech-Language Pathologist** — A person licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA).

(97) **Speech-Language Pathology Services** — Assessment of children with speech/language disorders, diagnosis and appraisal of specific speech/language disorders, referral for medical and other professional attention necessary for the rehabilitation of speech/language disorders and provision of speech/language services for the prevention of communicative disorders. Obtaining and interpreting information, coordinating care, and integrating necessary and appropriate speech-language pathology services relative to the student receiving services.

(98) **State Education Agency (SEA)** — See "Oregon Department of Education (ODE)".

(99) **State-Operated Schools** — The Oregon School for the Blind or the Oregon School for the Deaf. See "Educational Agency."

(100) **Student Health/Medical/Nursing Records** — Education Records that document, for Medical Assistance Program purposes, the Medicaid-eligible student's diagnosis or the results of tests, screens or treatments, treatment plan, the Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), and the record of treatments or health services provided to the child or student.

(101) **Teachers' Standards and Practices Commission (TSPC)** — The commission that governs licensing of teachers, personnel service specialists, and administrators as set forth in OAR Chapter 584. In order for schools or school Providers to participate in the Medicaid program and receive Medicaid reimbursement, they must meet the Medicaid provider qualifications. It is not sufficient for a state to use Department of Education provider qualifications for reimbursement of Medicaid-covered health services provided in an education setting.

(102) **Testing** — See "Assessment".

(103) **Testing Technician** — A person/technician adequately trained to administer and score specific tests, as delegated under the direction and supervision of a licensee, and maintains standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See ORS 675.010(4), OAR 858-010-0001, and 858-010-0002.

(104) **Third Party Billing** — The process of sending a bill to a public or private insurance company for a medical or health service given to someone who is insured.

(105) **Trading Partner** — means a provider, prepaid health plan (PHP), clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of electronic data interchange (EDI), electronic remittance advice (ERA), or electronic media claims (EMC), or any other mutually agreed means of electronic exchange or transfer of data. EDI transactions must comply with the requirements of the EDI rules OAR 407-120-0100 through 407-120-0200 for the purposes of these rules EDI does not include electronic transmission by web portal.

(106) **Trading Partner Agreement (TPA)** — means a specific request by a provider, PHP, clinic, or allied agency to conduct EDI transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(107) **Transportation Aide** — An individual trained for health and safety issues to accompany a Medicaid-eligible student transported to and from a covered Health Service as specified in the Individualized Education Program/individualized Family Service Plan (IEP/IFSP). The School Medical (SM) Provider must maintain documentation of the training, supervision and provision of the services billed to Medicaid. For the purposes of these rules, individual transportation aides are included in the cost calculation for transportation costs and will not be billed separately. This computation will not include delegated health care aides for whom costs are direct costs.

(108) **Transportation as a Related Service** — Specialized Transportation adapted to serve the needs of a Medicaid-eligible student to and from a covered health service that is necessary and appropriate, and described in the Individualized Education Program/individualized Family Service Plan (IEP/IFSP) as outlined in OAR 410-133-0080 (Coverage).

(109) **Transportation Vehicle Trip Log** — A record or log kept specifically for tracking each transportation trip a Medicaid-eligible student receives transportation to or from a covered health service. See OAR 410-136-0280 (Medical Transportation rules — Required Documentation and SBHS Rules Cost Determination and Payment 410-133-0245).

(110) **Treatment Plan** — A written plan of care services, including treatment with proposed location, frequency and duration of treatment as required by the health care practitioner's health licensing agency.

(111) **Unit** — A service measurement of time for billing and reimbursement efficiency. One (1) unit equals 15 minutes unless otherwise stated.

(112) **Web Portal Submitter** — means an individual or entity authorized to establish an electronic media connection with the Department to conduct a direct data entry transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 29-1993, f. & cert. ef. 10-1-93; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-133-0090

#### Public Education Agency School Medical Provider Payment Requirements

These rules are designed to assist the public Education Agency (EA) School Medical (SM) provider in matching state and federal funds for services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g) and are to be used in conjunction with the Division of Medical Assistance Programs (DMAP) General Rules (OAR 410 Division 120).

(1) Payment will be made in accordance with DHS Provider Rules Chapter 407 Division 120 and DMAP General Rules Chapter 410 Division 120 to the enrolled School Medical (SM) Provider with the Department of Human Services (DHS), also termed Department, meeting the requirements set forth in the Provider Enrollment Agreement for those covered health

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services provided by medically qualified staff working within the scope of their practice. Medically qualified staff must meet the qualifications as outlined in OAR 410-133-0120 Medically Qualified Staff.

(2) Signing the school medical provider enrollment agreement sets forth the relationship between the State of Oregon, the Department, and the SM Provider and constitutes agreement by the SM Provider to comply with all applicable rules of the Department, the Division of Medical Assistance Programs (DMAP), and federal and state laws or regulations. (See DHS Provider Rules chapter 407 division 120 and DMAP General Rules chapter 410 division 120).

(3) The school medical (SM) provider will bill for covered services provided to Medicaid-eligible students in accordance with DHS chapter 407 division 120 Provider rules, DMAP rules chapter 410 division 120 and these School-Based Health Services (SBHS) rules. Payments will be made through the Medicaid Management Information System (MMIS) and the SM provider must retain the full payment for the covered services provided. The SM provider must have a Trading Partner Agreement with the Department prior to submission of electronic transactions.

(4) School-based health services (SBHS) authorized under these rules is a cost-sharing Federal Financial Participation (FFP) matching program in which the Education Agency (EA) SM provider that is a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the SBHS claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the SBHS claims will be paid:

(a) The unit of government public education agency SM provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation (FFP) if the public funds meet the following conditions:

(A) The public funds are transferred to the Department from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds;

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The unit of government EA SM provider must pay its non-federal matching share portion for claims submitted to the Department in accordance with OAR 410-120-0035.

(5) Before DHS pays for SBHS claims, DHS must receive the SM provider's corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to DHS will delay reimbursement of claims and may require the SM provider to resubmit the claims.

(6) The Department will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If the Department has previously paid the SM provider for any claim which the CMS disallows, the SM provider must reimburse the Department the amount of the claim that the Department has paid to the SM provider, less any amount previously paid by the unit of government EA SM Provider to the Department for purposes of reimbursing the Department for the non-federal match portion of that claim.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 41-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 88-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 4-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-133-0100

### School Medical Provider Requirements

The School Medical (SM) Provider is responsible to:

(1) Enroll with the Department of Human Services' (also termed Department) Division of Medical Assistance Programs (DMAP) to provide health services, and comply with all the requirements in the Department Provider Rules OAR 407-120-0300 to 407-120-0380, 410-120-1260 and 410-133-0140 in these rules applicable to enrollment as a provider.

(2) Provide health services pursuant to the Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP) for special education under OAR chapter 581, division 15.

(3) Provide health services using medically qualified staff.

(4) Provide appropriate medical supervision by licensed medically qualified staff consistent with their licensing board requirements.

(5) Document health services in writing as required in OAR 410-133-0320.

(6) Maintain adequate medical and financial records as part of the Medicaid-eligible student's education record necessary to fully disclose the extent of the covered health services provided.

(7) Make the records required by these rules and specifically OAR 410-133-0320 available for a period of seven years.

(8) Document costs and establish a schedule of cost rates per discipline in accordance with OAR 410-133-0245.

(9) Provide access for on-site review of IDEA Medicaid-eligible students' education records directly related to payments for claims to the SM provider for Medicaid covered health related services specified on an IEP or IFSP and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program as the state or federal agency may from time to time request in compliance with OAR 407-120-0310.

(10) Document any changes in the individualized education program/individualized family service plan (IEP/IFSP) related to the provision of Medicaid covered health services under school-based health services (SBHS).

(11) Assure that SBHS services billed are billed in accordance with OAR 410-120-0035, reflect covered health services and do not reimburse for non-covered education services or administrative activities;

(12) Retain the full payment amount for Medicaid-covered services provided.

(13) Utilize procedures to confirm that all individuals providing health services to Medicaid-eligible students, whether as employees or under contract with the SM Provider, are eligible to provide Medicaid services and are not excluded from providing Medicaid services. Exclusion means the Department will not reimburse an SM Provider (allied agency) who employs a medically licensed individual who has defrauded or abused the Department for items or services furnished by that individual. (see OAR 407-120-0360 Consequences of non-Compliance and Provider Sanctions, OAR 410-133-0120 Medically Qualified Staff (1) and 410-133-0200 Not Covered Services ); and

(14) Comply with all applicable provisions of the Department's Administrative Services Division and Director's Office rules chapter 407 division 120 and the DMAP General Rules chapter 410 division 120, including rules related to the use of billing providers. If the SM provider seeks to submit claims to the Department electronically, it must comply with the applicable provisions of the Department's Electronic Data Interchange (EDI) rules for EDI transactions OAR 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-133-0140

### School Medical Provider Enrollment Provisions

(1) This rule applies only to providers seeking reimbursement from the Division of Medical Assistance Programs (DMAP), except as otherwise provided in OAR 410-120-1295.

(2) Only Educational Agency (EA) Providers of SBHS that meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005 will be enrolled with the Division of Medical Assistance Programs (DMAP) as school medical (SM) providers allowed to seek reimbursement for the provision of covered health services pursuant to a Medicaid eligible child's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP).

(3) The provider enrollment process will consist of: The completion and submission of the School Medical (SM) Provider enrollment application and the required attachments, disclosure documents, and Provider Agreement with the Division of Medical Assistance Programs.

(4) An approved enrollment application by DMAP or the DHS unit responsible for enrolling the SM Provider is a contractual agreement that binds the SM Provider to comply with the Department Provider Rules OAR 407-120-0300 through 407-120-0380, DMAP General Rules 410-120-1260 and School-Based Health Services (SBHS) rules.

(5) Signing the SM Provider Agreement enclosed in the application package constitutes agreement by Performing, and Billing providers for provision of SBHS to comply with all applicable rules of the Medical Assistance Program and federal and state laws and regulations.

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(6) An SM Provider is a Performing Provider. A Performing Provider is the Provider of a service or item. A Billing Provider is an individual, agent, business, corporation, clinic, group, institution, or other entity who in connection with the submission of claims to the Department, receives or directs the payment (either in the name of the Performing Provider or the name of the Billing Provider) from DHS, on behalf of a Performing Provider and has been delegated the authority to obligate or act on behalf of the Performing Provider (See DMAP General Rules 410-120-1260):

(a) A Billing Provider is responsible for identifying to DMAP and keeping current the identification of all Performing Providers for whom they bill, or receive or direct payments. This identification must include the Providers' names, DHS Provider Numbers, NPIs, and either the Performing Provider's Social Security Number (SSN) or Employer Identification Number (EIN). The SSN or EIN of the Performing Provider cannot be the same as the Tax Identification Number (TIN) of the Billing Provider. In order to facilitate timely claims processing and claims payment consistent with applicable privacy and security requirements, DHS requires Billing Providers to be enrolled consistent with the Provider enrollment process described in OAR 410-120-1260 (7);

(b) If the SM Performing Provider uses electronic media to conduct transactions with the Department, or authorizes a Billing Provider to conduct such electronic transactions, the SM Performing Provider must comply with the DHS Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. Enrollment as a SM Performing Provider or Billing Provider is a necessary requirement for submitting electronic claims, but the Provider must also register as a Trading Partner and identify the EDI Submitter;

(c) A school medical (SM) Performing Provider that uses electronic media to conduct transaction with the Department or authorizes a Billing provider to conduct such electronic transactions, must comply with the DHS electronic data interchange (EDI) rules OAR 407-120-0100 through 407-120-0200. Enrollment as an SM Performing Provider or Billing Provider is a necessary requirement for submitting electronic claims. If the SM Provider intends to use an electronic data interchange (EDI) submitter, the SM Performing Provider must register with the Department of Human Services (DHS) as a trading partner and shall complete the "Trading Partner Authorization of EDI Submitter" and the EDI submitter information required in the application in compliance with the trading partner requirements of identifying the authority of the EDI submitter to submit claims on its behalf. The EDI submitter must sign the EDI certification and meet other Department of Human Services' (DHS) EDI submission requirements pursuant to the electronic data interchange (EDI) rules, before the Department of Human Services (DHS) may accept an electronic submission from the EDI submitter on behalf of the Performing Provider. Information about the electronic data interchange (EDI) transaction requirements is available on the Department of Human Services' (DHS) web site. See OAR 407-120-0100 through 407-120-0200. Also, see OAR 407-120-0116 Web Portal Submitter and 407-120-0118 Conduct of Direct Data Entry Using Web Portal

(7) To be enrolled and able to bill as an SM Provider, an EA, must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules and must comply with all Oregon Statutes and regulations for provision of Medicaid and State Children's Health Insurance program (CHIP) services. In addition, all providers of services within the State of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(8) An EA, individual, or organization that is currently subject to sanction(s) by the Medical Assistance Program or Federal government is not eligible for enrollment (see OAR 407-120-0360 consequences of Non-Compliance and Provider Sanctions and OAR 410-120-1400).

(9) The Department of Human Services (DHS) requires compliance with the National Provider Identification (NPI) requirements in 45 CFR Part 142. Providers that obtain an NPI must update their records with DMAP Provider Enrollment. Provider applicants that have been issued an NPI must include that NPI number with the DMAP provider enrollment application.

(10) A Performing Provider number will be issued to an EA providing covered health care services or items upon:

(a) Completion of the application and submission of the required School-Based Health Services SM Provider attachment, disclosure documents, and Provider Agreement;

(b) The signing of the SM Provider application by the authorized representative for the EA to bind the EA SM Provider to compliance with these rules;

(c) Verification of licensing or certification. Loss of the appropriate licensure or certification or failure to meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005 will result in immediate dis-enrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification;

(d) Approval of the application and required documentation for an SM Provider by the Division of Medical Assistance Programs (DMAP) or the Division responsible for enrolling the provider.

(11) An SM Performing Provider may be enrolled retroactive to the date services were provided to a medical assistance client/child if:

(a) The SM Provider met the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005, was appropriately licensed, certified, and otherwise met all Medical Assistance Program requirements at the time services were provided; and

(b) Services were provided less than 12 months prior to the date of application for medical assistance provider status as evidenced by the first date stamped on the paper claims(s) submitted with application materials for those services either manually or electronically; or

(c) Extenuating circumstances existed outside the control of the EA SM Provider consistent with federal Medicaid regulations, with approval of the DMAP Provider Services Unit Manager.

(12) Issuance of a DHS assigned SM Provider number establishes enrollment of an EA as a provider for limited categories of services for the Medical Assistance Program applicable to the provision of Medicaid covered School Based Health Services (SBHS).

(13) An SM Provider is required for providing and continuing to provide to the Department accurate, complete and truthful information regarding their qualification for enrollment. The SM Provider is responsible for notifying DMAP in writing of a material change in any status or condition that relates to their qualifications or eligibility to provide SBHS including but not limited to change in any of the following information: changes address, business affiliation, licensure, ownership, certification, NPI, billing agents or Federal Tax Identification Number (TIN), change in status for meeting the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying the EA's programs for state reimbursement under OAR 581-015-2005, if the SM Provider or a person with an ownership or control interest, or an agent or managing employee of the SM Provider has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or Title XX services program, the SM Provider must notify the Division of Medical Assistance Programs (DMAP) in writing within 30 calendar days of the change:

(a) Failure to notify the Division of Medical Assistance Programs (DMAP) of a change of federal tax identification number (TIN) may result in the imposing of a \$50 fine;

(b) Changes in business affiliation, ownership and control of information, criminal convictions, NPI, or federal tax identification number (TIN) may require the submission of a new application;

(c) Payments made to providers who have not furnished such notification as required by this rule or to a Provider that has failed to submit a new application as required by this rule and DMAP OAR 410-120-1260 may be denied or recovered.

(14) For information regarding enrollment of Billing Providers (BP) and issuance of a DHS assigned BP Provider ID in compliance with Department Provider Rules see OAR 407-120-0300 through 407-120-0380, DMAP Provider Enrollment rules OAR 410-120-1260 and Department Electronic Data Transmission Rules 407-120-0100 through 407-120-0200.

(14) Provider termination:

(a) The SM Provider may terminate enrollment at any time. The request must be in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the SM Provider enrollment does not terminate any obligations of the SM Provider for dates of services during which the enrollment was in effect;

(b) The Division of Medical Assistance Programs (DMAP) provider terminations or suspensions may be for, but are not limited to the following:

(A) Breaches of provider agreement;

(B) Failure to comply with the statutes, regulations and policies of the Department of Human Services (DHS), Federal and State regulations that are applicable to the provider;



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(C) When no claims have been submitted in an 18-month period. The provider must reapply for enrollment.

(15) When one or more of the requirements governing a provider's participation in the medical assistance program are no longer met, the provider's medical assistance program provider number may be immediately suspended. The provider is entitled to a contested case hearing as outlined in 410-120-1600 through 410-120-1840 to determine whether the provider's medical assistance program number will be revoked.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-133-0220

### Billing and Payment

(1) The School Medical (SM) Provider must bill the Department of Human Services (DHS), also termed Department, in accordance with OAR 410-120-0035; and must bill at a cost rate no greater than the education agency's cost rate for the applicable discipline reviewed and accepted by the Department based on the cost determination process described in OAR 410-133-0245.

(2) Services must be billed on a CMS-1500 or by electronic media claims (EMC) submission using only those procedure codes specified for the School-Based Health Services program (SBHS). If the SM provider submits their claims electronically, the SM Provider must become a trading partner with the Department and comply with the requirements for Electronic Data Interchange (EDI) pursuant to OAR 407-120-0100 through 407-120-0200 and 410-001-0000 et seq.

(3) The Department will accept a claim up to 12 months from the date of service. See Department Provider Rules 407-120-030(7) Timely Submission of Claim or Encounter Data and General Rules OAR 410-120-1300 Timely Submission of Claims.

(4) Third party liability. In general, the Medicaid program is the payor of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, must be used first before the Department can be billed for covered health services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For health services provided under the Individuals with Disabilities Education Act (IDEA), Medicaid pays before Oregon Department of Education (ODE) or the Educational Agency (EA), to the extent the health service is a covered service provided to a Medicaid-eligible student documented as required under these rules, and subject to the applicable reimbursement rate;

(b) If School-Based Health Services (SBHS) are provided under Title V of the Social Security Act (Maternal and Child Health Services Block Grant), Medicaid-covered Health Services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) The Centers for Medicare and Medicaid Services (CMS) recognize that while schools are legally liable to provide IDEA-related health services at no cost to the eligible students, Medicaid reimbursement is available for these services because section 1903 (c) of the ACT requires Medicaid to be primary to the U.S. Department of Education for payment of the health-related services provided under IDEA.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-133-0280

### Rebilling

In order to correct a claim provided to a Medicaid-eligible student, the School Medical (SM) Provider must request an adjustment. The paid claim must be corrected on the Individual Adjustment Request Form (DMAP 1036) to allow revision of the original claim. Rebilling additional units of service on a CMS-1500 for the same timeframe would be denied as duplicate services. See Department Provider Rules 407-120-0350 Payments and Overpayments, DMAP Rules 410-120-1300 timely Submission of Claims and 410-120-1397 Recovery of Overpayments to Providers- Recoupments and Refunds

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0000

### Purpose — Babies First/Cacoon Program

(1) These rules are to be used in conjunction with the Division of Medical Assistance Programs' (DMAP) General Rules (chapter 410 division 120).

(2) Targeted Case Management (TCM) services is a medical assistance program operated by public health authorities. Babies First/Cacoon TCM program, authorized under these rules, is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for Targeted Case Management (TCM) Services Eligible for Federal Financial Participation.) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(3) The Babies First/Cacoon program TCM services rules define the Oregon Medicaid program for reimbursing services provided under Babies First/Cacoon. This program improves access to needed medical, social, education, and other services for infants and pre-school children (0 through 3 years) covered by Medicaid who are at risk of poor health outcomes as outlined in OAR 410-138-0040, Risk Factors. TCM services are provided by an enrolled Babies First/Cacoon program TCM provider consistent with these rules.

(4) TCM services include management of medical and non-medical services, which address health, psychosocial, economic, nutritional, and other needs. Home visits constitute a significant part of the delivery of targeted case management services. No direct care services are authorized as part of case management activities.

(5) Provision of Babies First/Cacoon program TCM services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available Babies First/Cacoon program TCM service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.085

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0005

### Payment for Targeted Case Management Services Eligible for Federal Financial Participation

(1) All Targeted Case Management (TCM) rules are to be used in conjunction with the Division of Medical Assistance Programs (DMAP) General Rules (chapter 410 division 120) and the TCM supplemental information.

(2) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) Payment will be made to the TCM provider enrolled with the Department of Human Services (DHS) as a unit of government provider meeting the requirements set forth in the provider enrollment agreement.

(4) Signing the provider enrollment agreement sets forth the relationship between the State of Oregon, DHS and the TCM provider and constitutes agreement by the TCM provider to comply with all applicable rules of DHS, federal and state laws or regulations.

(5) The TCM provider will bill according to administrative rules in chapter 410, division 138 and the TCM supplemental information. Payments will be made using the Medicaid Management Information System (MMIS) and the TCM provider will retain the full payment for covered services provided. The TCM provider must have a Trading Partner Agreement with DHS prior to submission of electronic transactions.

(6) Targeted case management authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the TCM claims will be paid:

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(a) The TCM provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to the Social Security Act, 42 CFR 433.51, public funds may be considered as the state's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to DHS from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under the Social Security Act 42 CFR 433 Subpart B;

(b) The unit of government TCM provider must pay the non-federal matching share to DHS in accordance with OAR 410-120-0035.

(7) Before DHS pays for TCM claims, DHS must receive the corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to DHS will delay payment and may require the TCM provider to resubmit the claims.

(8) DHS will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If DHS has previously paid the TCM provider for any claim which CMS disallows, the TCM provider must reimburse DHS the amount of the claim that DHS has paid to the TCM provider, less any amount previously paid by the unit of government TCM provider to DHS for the non-federal match portion for that claim.

(9) Providers can only bill Medicaid for allowable activities in the Targeted Case Management (TCM) program, that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the following allowable activities must occur before billing:

(a) Assessment;

(b) Development of a care plan;

(c) Referral (including follow up); and

(d) Monitoring (including follow up).

(10) TCM claims must not duplicate payments made to:

(a) Public agencies or private entities for any other case management activities or direct services provided under the State Plan or the Oregon Health Plan (OHP), through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time;

(b) A TCM provider by program authorities under different funding authority than the Oregon Health Plan, including but not limited to other public health funding;

(c) A TCM provider for administrative expenditures reimbursed under agreement with DHS or any other program or funding source.

(11) Medicaid is only liable for the cost of otherwise allowable case management services if there are no other third parties liable to pay. However, while schools are legally liable to provide IDEA-related health services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Act requires Medicaid to be primary to the U.S. Department of Education for payment for covered Medicaid services furnished to a child with a disability. These services may include health services included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) under the IDEA. Payment for those services that are included in the IEP or IFSP would not be available when those services are not covered Medicaid services.

Stat. Auth.: ORS 409.010 & ORS 409.110

Stats. Implemented: ORS 414.085

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0007

#### Targeted Case Management — Covered Services

(1) Targeted case management services may be furnished only to eligible clients. An "eligible client" is a person who is eligible for Medicaid and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(2) "Targeted case management services" are case management services provided to a specific target group of individuals that assist individuals eligible under the State plan in gaining access to needed medical, social, educational, and other services (such as housing or transportation).

(3) Targeted Case Management Services billed to Medicaid must be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine whether the client's needs or preferences have changed. A reassessment must be conducted at least annually or more frequently if changes occur in an individual's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and actions to address the medical, social, educational, and other services needed by the eligible client. These may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker(s) and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral and related activities such as:

(A) Scheduling appointments for the client in the target group to obtain needed services; and

(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage has been made;

(d) Monitoring or ongoing face-to-face or other contact;

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine whether the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client;

(B) Monitoring activities may include contacts with:

(i) The participating eligible client in the target group;

(ii) The eligible client's healthcare decision maker(s), family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.085

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0009

#### Targeted Case Management — Services Not Covered

(1) Direct delivery of an underlying medical, educational, social or other service, to which the eligible client has been referred.

(2) Providing transportation to a service to which an eligible client is referred.

(3) Escorting an eligible client to a service.

(4) Providing child care so that an eligible client may access a service.

(5) Contacts with individuals who are not eligible for Medicaid, or who are Medicaid eligible but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care.

(6) Assisting an individual, who has not yet been determined eligible for Medicaid, to apply for or obtain this eligibility.

(7) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.085

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0020

#### Definitions — Babies First/Cacoon program

(1) Assessment — The act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager will gather information

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from family members, medical providers, social workers, and educators, if necessary.

(2) **Care Plan** — A set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) **Case Management** — Activities performed by a case manager to assist the eligible clients under the Medicaid State plan to gain access to and effectively use needed medical, social, educational, and other services (such as housing or transportation). Also see definition for “Targeted Case Management.”

(4) **Duplicate payments** — Payments are considered “duplicate” if more than one entity is reimbursed for the same services to meet the same need for the same client.

(5) **Eligible client** — An individual who is deemed eligible for Medicaid or the Children’s Health Insurance Program (CHIP) by the Department of Human Services (DHS) and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(6) **Medical Assistance Program** — A program that provides and pays for health services for eligible Oregonians. The Oregon Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children’s Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP).

(7) **Monitoring** — Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client’s health care decision maker(s), family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client’s care to ensure the care plan is effectively implemented.

(8) **Referrals** — Performing activities such as scheduling appointments that link the eligible client with medical, social, educational providers, or other programs and services, and follow-up and documentation of services obtained.

(9) **Targeted Case Management (TCM) Services** — Case management services provided to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients. See definition for “Eligible client.”

Stat. Auth.: ORS 409.010, 409.110

Stats. Implemented: ORS 409.010, 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0080

#### **Rate Methodology, Billing Criteria and Codes — Babies First/Cacoon Program**

(1) Payment will be made to a Babies First/Cacoon Targeted Case Management (TCM) Provider enrolled with the Department of Human Services (DHS) as a unit of government provider meeting the requirements set forth in the Provider Enrollment Agreement as the performing provider for those Case Management services provided by the employed staff person.

(2) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon DHS and the TCM Provider and constitutes agreement by the provider to comply with all applicable rules of the Division of Medical Assistance Programs, federal and state laws and regulations.

(3) The TCM Provider will bill according to OAR 410 Division 138 rules. Payments will be made through the Medicaid Management Information System (MMIS) and the TCM Provider will retain the full payment for covered services provided. The TCM Provider must have a trading partner agreement with DHS prior to submission of electronic transactions.

(4) Targeted Case Management authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM Provider, as a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rate in effect during the quarter when the TCM claims will be paid:

(a) The TCM Provider’s non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State’s share in claiming federal financial participation if the public funds meet the following conditions:

(A) The public funds are transferred to DHS from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The TCM Provider must pay its non-federal matching share to DHS in accordance with OAR 410-120-0035.

(5) Failure to timely remit the non-federal share described in subsection (4) will cause a delay in TCM claim processing and payment until DHS receives the TCM Provider’s non-federal matching share. If the TCM Provider’s non-federal matching share is not paid within a reasonable time, the TCM claims will be denied.

(6) DHS will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If DHS has previously paid the TCM Provider for any claim which CMS disallows, the TCM Provider must reimburse DHS the amount of the claim that DHS has paid to the TCM Provider, less any amount previously paid by the unit of government TCM Provider to DHS for purposes of reimbursing DHS the non-federal match portion for that claim.

(7) Billing criteria for this program are as follows:

(a) Use procedure code “T1016” for Babies First/Cacoon — Targeted Case Management. Maximum billing for the T1016 procedure code is one time per day per client. One of the three activities listed below must occur in order to bill:

(A) Screening;

(B) Assessment;

(C) Intervention;

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) The provider must use Diagnosis Code “V201.”

(8) Duplicate billings are not allowed and duplicate payments will be recovered. Services will be considered as duplicate if the same services are billed by more than one entity to meet the same need. Medical services must be provided and billed separately from Case Management Services.

(9) A unit of service can only be billed once under one procedure code, under one provider number.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0300

#### **Human Immunodeficiency Virus Targeted Case Management Program**

(1) These administrative rules are to be used in conjunction with the Division of Medical Assistance Program’s (DMAP) General Rules (chapter 410 division 120).

(2) Human Immunodeficiency Virus (HIV) Targeted Case Management (TCM) program is a medical assistance program operated by public health authorities and contracted service providers. HIV TCM services authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation.) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(3) The HIV TCM rules explain the Oregon Medicaid Program for reimbursing HIV TCM services. This program improves access to needed medical, social, education, and other services for Medicaid eligible clients in Multnomah County with symptomatic HIV disease and one or more risk factors as outlined in OAR 410-138-0340, Risk Criteria. Without targeted case management services these risk factors could result in an eligible client’s inability to remain safely in their home.

(4) HIV TCM services include management of medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by an enrolled HIV TCM provider consistent with these rules. No direct care services are authorized as part of case management activities.



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(5) Provision of HIV TCM services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available HIV TCM service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.085

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0320

### Definitions — Human Immunodeficiency Virus Program

(1) Assessment — The act of gathering of information and reviewing historical existing records of an eligible client in the target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager will gather information from family members, medical providers, social workers and educators, if necessary.

(2) Care Plan — A set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) Case Management — Activities performed by a case manager to assist the eligible clients under the Medicaid State plan to gain access to and effectively use needed medical, social, educational, and other services (such as housing or transportation). Also see definition for Targeted Case Management.

(4) Duplicate payments — Payments are considered “duplicate” if more than one entity is reimbursed for the same services to meet the same need for the same client.

(5) Eligible client — An individual who is deemed eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Department of Human Services (DHS) and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(6) Medical Assistance Program — A program that provides and pays for health services for eligible Oregonians. Oregon's Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP).

(7) Monitoring — Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client's health care decision maker(s), family members, providers or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care to ensure the care plan is effectively implemented.

(8) Referrals — Performing activities such as scheduling appointments that link the eligible individual with medical, social, educational providers, or other programs and services, and follow up and documentation of services obtained.

(9) Targeted Case Management (TCM) services — Case management services provided to a specific target group that assist eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients. See definition for “Eligible client.”

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 409.010

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0380

### Rate Methodology, Billing Criteria and Codes — Human Immunodeficiency Virus (HIV) Program

(1) Providers can only bill for allowable activities in the HIV Targeted Case Management (TCM) program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill:

- (a) Assessment;
- (b) Development of a care plan;
- (c) Referral (including follow up);
- (d) Monitoring (including follow up).

(2) A unit of service can only be billed under one procedure code and one provider number:

(a) The procedure code to be used is “T2023”. The maximum billing for the T2023 procedure code is one time per calendar month per eligible client;

(b) The provider must use diagnosis code “V08” or “042” for HIV TCM program services.

(3) Any place of service (POS) is valid.

(4) Prior authorization is not required.

(5) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for HIV TCM services under the eligible client's care plan. (“Duplicate payment” is defined in 410-138-0320). DMAP will recover duplicate payments.

(6) DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0500

### Pregnant Substance Abusing Women and Women with Young Children Targeted Case Management Program

(1) These rules are to be used in conjunction with the General Rules governing the Division of Medical Assistance Programs (DMAP) (chapter 410, division 120).

(2) The Pregnant Substance Abusing Women and Women with Young Children (PWWC) Targeted Case Management (TCM) program is a medical assistance program operated by public health authorities. PWWC TCM services authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity unit of government is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation.) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(3) The TCM rules for Pregnant Substance Abusing Women and Women with Young Children explain the Oregon Medicaid Program for reimbursing PWWC TCM services. This program improves access to needed medical, social, education and other services to Medicaid eligible women living in Marion, Polk, Linn, Benton, Jackson, and Yamhill Counties, provided by an enrolled PWWC TCM provider consistent with these rules.

(4) TCM services include management of medical and non-medical services, which address physical, psychosocial, nutritional and other needs to help this target group remain clean and sober. The provision of TCM services by an enrolled PWWC TCM provider must be consistent with these rules. No direct care services are authorized as part of case management activities.

(5) Provision of PWWC TCM services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available PWWC TCM service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 41-1999, f. 10-15-99, cert. ef. 10-20-99; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0520

### Definitions — Pregnant Substance Abusing Women and Women with Young Children Program

(1) Assessment — The act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager will gather information from family members, medical providers, social workers, and educators, if necessary.

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(2) **Care Plan** — A set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) **Case Management** — Activities performed by a case manager to assist the eligible clients under the Medicaid State plan to gain access to and effectively use needed medical, social, educational, and other services (such as housing or transportation). Also see definition for “Targeted Case Management.”

(4) **Duplicate payments** — Payments are considered “duplicate” if more than one entity is reimbursed for the same services to meet the same need for the same client.

(5) **Eligible client** — An individual who is deemed eligible for Medicaid or the Children’s Health Insurance Program (CHIP) by the Department of Human Services (DHS) and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(6) **Medical Assistance Program** — A program that provides and pays for health services for eligible Oregonians. The Oregon Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children’s Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP).

(7) **Monitoring** — Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client’s health care decision maker(s), family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client’s care to ensure the care plan is effectively implemented.

(8) **Referrals** — Performing activities such as scheduling appointments that link the eligible client with medical, social, educational providers, or other programs and services, and follow-up and documentation of services obtained.

(9) **Targeted Case Management (TCM) Services** — Case management services provided to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients. See definition for “Eligible client.”

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.010

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0560

### **Rate Methodology, Billing Criteria and Codes — Pregnant Substance Abusing Women and Women with Young Children**

(1) Providers can only bill for allowable activities in the PWWC Targeted Case Management Program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill:

- (a) Assessment;
- (b) Development of a care plan;
- (c) Referral (including follow up);
- (d) Monitoring (including follow up).

(2) A unit of service can only be billed under one procedure code and one provider number:

(a) Providers must use procedure code “T2023” for Pregnant Substance Abusing Women with Young Children — TCM services. The maximum billing for the T2023 procedure code is one time per calendar month per eligible client.

(b) Providers must use diagnosis code “V6141” For Pregnant Substance Abusing Women with Young Children program — TCM services.

(3) Any place of service (POS) is valid.

(4) Prior authorization is not required.

(5) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client’s care plan. (“Duplicate payment” is defined in 410-138-0520). DMAP will recover duplicate payments.

(6) DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0600

### **Purpose — Federally Recognized Tribal Governments in Oregon**

(1) These rules are to be used in conjunction with DMAP General Rules (chapter 410 division 120).

(2) The Federally Recognized Tribal Government (Tribal) Targeted Case Management (TCM) program is a medical assistance program operated by federally recognized tribal governments in Oregon. Tribal TCM services authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the Tribal TCM provider unit of government entity is responsible for payment of allowable tribal matching funds as the non-federal matching share of the amount of TCM claims. (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation.) The TCM services program rules are designed to assist the case management provider organization in matching allowable tribal and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) The Tribal TCM rules explain the Oregon Medicaid program to reimburse the TCM services provided by a federally recognized tribal government located in the State of Oregon. This program improves access to needed medical, social, education, and other services for Medicaid eligible adults, children, and pregnant women, served by tribal programs, provided by an enrolled tribal TCM provider consistent with these rules. No direct care services are authorized as part of case management activities.

(4) Tribal TCM services include case management of medical and non-medical services, which address health, psychosocial, economic, nutritional, and other needs.

(5) Provision of Tribal TCM services may not restrict an eligible client’s choice of providers:

(a) Eligible clients must have free choice of available Tribal TCM service providers or other TCM service providers available to the eligible client, subject to Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.085

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0620

### **Definitions — Federally Recognized Tribal Governments in Oregon**

(1) **Assessment** — The act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager will gather information from family members, medical providers, social workers, and educators, if necessary.

(2) **Care Plan** — A set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) **Case Management** — Activities performed by a case manager to assist the eligible clients under the Medicaid State plan to gain access to and effectively use needed medical, social, educational, and other services (such as housing or transportation). Also see definition for “Targeted Case Management.”

(4) **Duplicate payments** — Payments are considered “duplicate” if more than one entity is reimbursed for the same services to meet the same needs for the same client.

(5) **Eligible client** — An individual who is deemed eligible for Medicaid or the Children’s Health Insurance Program (CHIP) by the Department of Human Services (DHS) and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(6) **Medical Assistance Program** — A program that provides and pays for health services for eligible Oregonians. The Oregon Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children’s Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP).

(7) **Monitoring** — Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client’s health care decision makers, family members, providers or other entities or

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individuals when the purpose of the contact is directly related to managing the eligible client's care to ensure the care plan is effectively implemented.

(8) Referrals — Performing activities such as scheduling appointments that link the eligible client with medical, social, educational providers, or other programs and services and follow-up and documentation of services obtained.

(9) Targeted case management (TCM) services — Case management services provided to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients. See definition for "Eligible client."

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 409.010 & 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0680

#### Cost Rate Methodology, Billing Criteria and Codes — Federally Recognized Tribal Governments in Oregon

(1) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for Targeted Case Management (TCM) services under an eligible client's care plan. ("Duplicate payment" is defined in 410-138-0620). DMAP will recover duplicate payments. DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These case management services must be billed separately.

(2) Payment Methodology for Tribal TCM: For the purposes of these TCM rules, the amount of time in a "unit" equals one month. A unit includes at least one documented contact with the client (or other person acting on behalf of the client) and any number of documented contacts with other individuals or agencies identified through the case planning process.

(3) Payment for Tribal TCM services will be made using a monthly rate based on the total average monthly cost per client served by the TCM provider during the last fiscal year for which audited financial statements have been filed with the Department of Human Services (DHS). The costs used to derive the monthly Tribal TCM rate will be limited to the identified costs divided by the number of clients served. Tribal TCM provider costs for direct and related indirect costs that are paid by other federal or state programs must be removed from the cost pool. The cost pool must be updated, at a minimum, on an annual basis using a provider cost report. The rate is established on a prospective basis. In the first year, the rate will be based on estimates of cost and the number of clients served. For subsequent years, the rate will be based on actual eligible TCM costs from the previous year. A cost report must be submitted to DHS at the end of each state fiscal year (at a minimum), and will be used to establish a new rate for the following fiscal year.

(4) Billing criteria: Providers can only bill for allowable activities in the Tribal TCM program, that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill:

- (a) Assessment;
- (b) Development of a care plan;
- (c) Referral (including follow up);
- (d) Monitoring (including follow up).
- (5) A unit of service can only be billed under one procedure code and one provider number:

(a) Providers must use procedure code "T1017" to bill for Federally Recognized Tribal Government TCM procedures. The maximum billing for the T1017 procedure code is one time per month per eligible client.

(b) Providers must use the appropriate diagnosis code and modifier for Federally Recognized Tribal Government TCM services.

(6) Any place of service (POS) is valid.

(7) Prior authorization is not required.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0700

#### Early Intervention/Early Childhood Special Education Targeted Case Management Program

(1) These rules are to be used in conjunction with the DMAP General Rules Program (chapter 410, division 120).

(2) The Targeted Case Management (TCM) services rules are designed to assist the Early Intervention/Early Childhood Special Education (EI/ECSE) TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) The EI/ECSE TCM program is a medical assistance program provided by enrolled EI/ECSE TCM providers that meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE.

(4) Enrolled EI/ECSE TCM providers must be contractors with the Oregon Department of Education for the provision of EI/ECSE services or be sub-contractors with such a contractor.

(5) EI/ECSE TCM services authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the enrolled EI/ECSE TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005).

(6) The rules of the EI/ECSE TCM program explain the Oregon Medicaid program for reimbursing case management services available to Medicaid-eligible preschool children with disabilities, receiving EI/ECSE services from birth until they are eligible for public school (0-5 yrs of age). These services are available on a fee-for-service basis, within the limitations established by the Medical Assistance Program and the chapter 410, division 138 rules, consistent with the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).

(7) EI/ECSE TCM program services include management of medical and non-medical services, to address an eligible child's medical, social, educational, and other service needs (such as housing or transportation) in coordination with a child's Individualized Family Service Plan (IFSP), based on information collected through the TCM assessment or periodic reassessment process. No direct services are authorized as part of case management activities.

(8) Provision of EI/ECSE TCM services may not restrict an eligible client's choice of providers.

(a) Eligible clients must have free choice of available EI/ECSE TCM service providers or other TCM service providers available to the eligible client, subject to Social Security Act, 42 USC 1396n(g).

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.085

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

### 410-138-0720

#### Definitions — Early Intervention/Early Childhood Special Education Targeted Case Management

(1) Assessment — The act of gathering of information and reviewing historical and existing records of an eligible client in the EI/ECSE target group to determine the need for medical, social, educational, and other services (such as housing or transportation) in coordination with the client's Individualized Family Service Plan (IFSP).

(2) Care Plan — A Targeted Case Management Plan coordinated with specified goals and actions on an eligible child's IFSP. The case manager (i.e., service coordinator) identifies services and resources to meet the eligible child's identified needs for medical, social, educational, and other services (such as housing or transportation) based on the information collected through the targeted case management assessment or periodic reassessment process.

(3) Case management — Activities performed by the case manager to assist eligible clients under the State plan in the EI/ECSE target group to gain access to and effectively use needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the care plan in coordination with an eligible client's IFSP.

(4) Case manager (i.e., service coordinator) — An employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point of contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to



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obtain needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the eligible client's care plan in coordination with the client's IFSP.

(5) Early Intervention (EI) — A program designed to address the unique needs of a child age 0-3 years with a disability.

(6) Early Childhood Special Education (EI/ECSE) — A program designed to address the unique needs of a child age 3-5 years with a disability.

(7) EI/ECSE — Early Intervention/Early Childhood Special Education (EI/ECSE) services are services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child's Individualized Family Service Plan (IFSP).

(8) EI/ECSE Targeted Case Management program — as a service under the State plan, includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination with the eligible client's IFSP. EI/ECSE TCM Providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE; and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be sub-contractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client's free choice of providers. See definition for "eligible client".

(9) Eligible client — An individual who is deemed eligible for Medicaid or the Children's Health Insurance Program by the Department of Human Services (DHS). For the purposes of EI/ECSE TCM services the term "eligible client" applies to children eligible for EI/ECSE services under the IDEA and eligible for EI/ECSE TCM services as defined in the Medicaid State plan, at the time the services are furnished.

(10) Individualized Family Service Plan (IFSP) — A written plan of early childhood special education services, early intervention services, and other services developed in accordance with criteria established by the Oregon Department of Education for each child (ages birth to 5 years) eligible for IFSP services. The plan is developed to meet the needs of a child with disabilities in accordance with requirements and definitions in Oregon Administrative Rules, chapter 581, division 15.

(11) Medical Assistance Program — A program that provides and pays for health services for eligible Oregonians. Oregon's Medical Assistance Program includes TCM services provided to children eligible under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP).

(12) Monitoring — Ongoing face-to-face or other contact to conduct follow up activities with the eligible child's health care decision maker(s), family members, providers or other entities or individuals when the purpose of the contact is directly related to the management of the eligible child's care to ensure the care plan is effectively implemented.

(13) Reassessment — Periodically reassessing the eligible child to determine whether or not medical, social, educational or other services continue to be adequate to meet the goals and objectives identified in the care plan in coordination with a child's IFSP. Reassessment decisions include those to continue, change or terminate TCM services. A reassessment must be conducted at least annually or more frequently if changes occur in an eligible child's condition; or when resources are inadequate or the service delivery system is non-responsive to meet the child's identified service needs.

(14) Referrals — Performing activities such as scheduling appointments that link the eligible child with medical, social, educational providers, or other programs and services, and follow-up and documentation of services obtained.

(15) Targeted case management (TCM) services — Case management services provided to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients. See definition for "Eligible client."

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 409.010

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0740

### Provider Organizations — Early Intervention/Early Childhood Special Education Targeted Case Management

(1) Qualifications of Early Intervention/Early Childhood Special Education (EI/ECSE) Targeted Case Management (TCM) providers:

(a) TCM Providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE; and

(b) Must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or sub-contractors with such a contractor, and must meet the following qualifications:

(A) Demonstrated capacity (including sufficient number of staff that meet the personnel standards requirements in OAR 581-015-2900) to provide EI/ECSE TCM services;

(B) Demonstrated Case Management experience in coordinating and linking such community resources as required by the target population;

(C) Demonstrated experience with the target population;

(D) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(E) A financial management capacity and system that provides documentation of services and costs;

(F) Capacity to document and maintain individual case records in accordance with state and federal requirements, including requirements for recordkeeping in OAR 410-120-1360, and confidentiality requirements in the Individuals with Disabilities Education Act, ORS 192.518 – 192.524, 179.505, and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable;

(G) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(2) In addition to the qualification requirements in subsection (1) of this rule, the EI/ECSE TCM provider must be enrolled as an EI/ECSE TCM provider with the Division of Medical Assistance Programs (DMAP).

(3) The EI/ECSE TCM provider must either be a governmental entity or a subcontractor of a government entity:

(a) The EI/ECSE TCM provider public entity unit of government is solely responsible for providing the EI/ECSE TCM provider's share from public funds for purposes of OAR 410-138-0005 of this rule;

(b) If the EI/ECSE TCM provider is a subcontractor of a governmental entity, the governmental entity is responsible to make the public fund payments in compliance with OAR 410-138-0005.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

## 410-138-0780

### Cost Rate Methodology, Billing Criteria and Codes for Early Intervention/Early Childhood Special Education Targeted Case Management

(1) Billing criteria for this program are as follows:

(a) Providers can only bill for allowable activities in the Early Intervention/Early Childhood Special Education (EI/ECSE) Targeted Case Management (TCM) program that assist Medicaid eligible preschool children with disabilities, from birth until they are eligible for public school (0-5 years of age) to gain access to needed medical, social, educational, and other services, such as housing or transportation. These children must be eligible for EI/ECSE services under the IDEA and eligible for EI/ECSE TCM services as defined in the Medicaid State plan, at the time the services are furnished. One or more of the activities listed below must occur in order to bill:

(A) Assessment;

(B) Development of a care plan;

(C) Referral (including follow-up);

(D) Monitoring (including follow up).

(2) A unit of service can only be billed under one procedure code and one provider number:

(a) Providers must use procedure code "T2023" and include the "TL" modifier for EI/ECSE. The maximum billing for procedure code T2023 is one time per month per eligible client;

(b) Providers must use diagnosis code "V62.3": Educational Circumstances.

(3) Any place of service (POS) is valid.

(4) Prior authorization is not required.

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(5) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0005(10)). DMAP will recover duplicate payments.

(6) DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08

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**Rule Caption:** January 1, Rule Revisions — rule omitted from standard filing.

**Adm. Order No.:** DMAP 44-2008(Temp)

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**Certified to be Effective:** 1-1-09 thru 6-15-09

**Notice Publication Date:**

**Rules Amended:** 410-122-0202

**Subject:** The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily amended rule 410-122-0202 to change the title of the rule to "Positive Airway Pressure Devices for Adults," require downloadable report of PAP device compliance & therapy and add new inclusion criteria for coverage. An "emergency" or temporary rule filing is necessary because the new criteria must be in effect January 1 and there is not adequate time for a standard filing. DMAP intends to file this rule permanently on or before June 2009.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-122-0202

#### **Positive Airway Pressure (PAP) Devices for Adult Obstructive Sleep Apnea (OSA)**

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover a single level positive airway pressure (CPAP) device for adults (age 19 or older) with OSA when the following criteria are demonstrated on polysomnography:

(a) The apnea-hypopnea index (AHI) or Respiratory Disturbance Index (RDI) is greater than or equal to 15 events per hour with a minimum of 30 events; or

(b) The AHI or RDI is greater than or equal to 5 and less than 15 events per hour with a minimum of 10 events and documentation of:

(A) Excessive daytime sleepiness as documented by a score of greater than 10 on the Epworth Sleepiness Scale, impaired cognition, mood disorders or insomnia; or

(B) Hypertension, ischemic heart disease or history of stroke; and

(c) The client or their caregiver has received instruction from the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider of the PAP device and accessories in the proper use and care of the equipment;

(d) A respiratory assist device (RAD) without backup rate (E0470) may be covered for adults with OSA when:

(A) The criteria in (1)(a)-(c) are met; and

(B) A single level (E0601) positive airway pressure device has been tried and proven ineffective, based on a therapeutic trial;

(e) If a CPAP device is tried and found ineffective during the initial three month home trial, substitution of a RAD does not require a new sleep study;

(f) If a CPAP device has been used for more than three months and the client is switched to a RAD, a clinical re-evaluation is required, but a new sleep study is not required. A new three month trial would begin for use of the RAD;

(g) Coverage, coding and documentation requirements for the use of RADs for diagnoses other than OSA are addressed in 410-122-0205 Respiratory Assist Devices;

(h) Auto-CPAP (APAP) as a second or third line alternative therapy for OSA when the following criteria are met:

(A) The level of fixed CPAP required is at least 10cms H2O as evidenced by an in-laboratory, technician-attended CPAP titration during polysomnography; and

(B) The client is intolerant of high fixed CPAP pressures (>10cms H2O) despite documented client education and interventions to improve client comfort and compliance. These interventions should include:

(i) The use of a topical nasal corticosteroid spray or anticholinergic spray if nasal complaints are significant; and

(ii) Changes made by a nurse or technician, in consultation with the attending physician, to the CPAP circuit or mask, using different nose masks, face masks, nasal pillows or head harnesses as appropriate to achieve maximum client comfort;

(i) A three month trial (rental) period for CPAP is required prior to purchase;

(j) Rental charges apply toward purchase;

(k) Continued coverage of E0470 or E0601 beyond the first three months of therapy: Ongoing rental beyond the first three months when conditions of coverage are met is an option in lieu of purchase when medically appropriate and cost effective;

(l) For extended use of a PAP device beyond the first three months of initial therapy, the following documentation is required:

(A) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage data; and

(B) Phone consultation record by the treating practitioner's medical staff which supports clinical benefit including client tolerance, compliance and efficacy and symptoms of OSA are improved; or

(C) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment;

(m) The clinical re-evaluation would occur between the 61st and 91st day following the initiation of CPAP;

(n) If the practitioner re-evaluation does not occur until after the 91st day but the evaluation demonstrates that the client is benefiting from PAP therapy as defined in criteria, continued coverage of the PAP device will commence with the date of that re-evaluation;

(o) If a CPAP device was used more than three months and the client is switched to a RAD, then the clinical re-evaluation would occur between the 61st and 91st day following initiation of the RAD;

(p) Polysomnographic studies must be scored according to the recommended rules as described in the American Academy of Sleep Medicine (AASM) Manual for the Scoring of Sleep and Associated Events;

(q) Payment Authorization: From the initial date of service through the second date of service, PAP device rental and only related accessories necessary for the effective use of the PAP device during this time period and subject to rule limitations may be dispensed without prior authorization (PA). The provider is still responsible to ensure all rule requirements are met. Payment authorization (i.e., a payment authorization number for billing) is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require PA;

(r) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must request specific ongoing PAP supplies and accessories, subject to rule limitations and requirements, before they are dispensed. The DMEPOS provider must not automatically dispense a quantity of supplies and accessories on a predetermined regular basis, even if the client has "authorized" this in advance;

(s) It is the provider's responsibility to monitor appropriate and effective use of the device as ordered by the treating practitioner. When the equipment is not being used as prescribed, the provider must stop billing for the equipment and related accessories and supplies;

(t) For auto-titrating CPAP devices, use HCPCS code E0601;

(u) Products must be coded as published by the Pricing, Data Analysis and Coding (PDAC) Contractor by the Centers for Medicare and Medicaid Services;

(v) For a PAP device dispensed prior to January 1, 2009, if the initial coverage criteria in effect at the time were met and the criteria for coverage after the first three months that were in effect at the time were met, the device will continue to be covered for dates of service on or after January 1, 2009 as long as the client continues to compliantly use the device;

(w) For a client using a PAP device prior to Oregon Health Plan (OHP) enrollment, continuing coverage for the device and related acces-

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sories may be authorized on a case-by-case basis by the appropriate authorizing unit;

(x) The following services are not covered:

(A) PAP devices when conditions of coverage as described in this rule are not met;

(B) Unattended auto-CPAP (APAP) as an alternative to technician-titrated CPAP in clients with OSA, or for the treatment of clients with the following conditions:

- (i) Central apnea;
- (ii) Congestive heart failure;
- (iii) Lung disease (e.g., chronic obstructive pulmonary disease);
- (iv) Nocturnal O<sub>2</sub> desaturation due to conditions other than OSA;
- (v) Absence of snoring (either natural or secondary to palatal surgery);

(C) A RAD with backup rate.

(2) Accessories:

(a) Accessories used with a PAP device are covered when the coverage criteria for the device are met;

(b) Accessories are separately reimbursable at the time of initial issue and when replaced;

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating practitioner for use with a covered PAP device (E0470, E0601);

(d) The following represents the usual maximum amount of accessories expected to be medically appropriate:

(A) A4604 — 1 per 3 months;

(B) A7027 — 1 per 3 months;

(C) A7028 — 2 per month;

(D) A7029 — 2 per month;

(E) A7030 — 1 per 3 months;

(F) A7031 — 1 per month;

(G) A7032 — 2 per month;

(H) A7033 — 2 per month;

(I) A7034 — 1 per 3 months;

(J) A7035 — 1 per 6 months;

(K) A7036 — 1 per 6 months;

(L) A7037 — 1 per 3 months;

(M) A7038 — 2 per month;

(N) A7039 — 1 per 6 months;

(O) A7046 — 1 per 6 months.

(3) Guidelines:

(a) Polysomnography is the continuous and simultaneous monitoring and recording of various physiological and pathophysiological parameters of sleep with physician review, interpretation, and report. It must include sleep staging, which is defined to include a 1-4 lead electroencephalogram (EEG), and electro-oculogram (EOG), submental electromyogram (EMG) and an electrocardiogram (ECG). It must also include at least the following additional parameters of sleep: airflow, respiratory effort, and oxygen saturation by oximetry. It may be performed as either a whole night study for diagnosis only or as a split night study to diagnose and initially evaluate treatment;

(b) For the purposes of this rule, polysomnographic studies must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements;

(c) Polysomnographic studies must not be performed by a DMEPOS provider;

(d) Apnea is defined as the cessation of airflow for at least 10 seconds documented on a polysomnogram;

(e) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% decrease in oxygen saturation;

(f) The AHI is defined as the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device;

(g) The RDI is defined as the average number of apneas plus hypopneas per hour of recording without the use of a positive airway pressure device;

(h) If the AHI or RDI is calculated based on less than two hours of continuous recorded sleep, the total number of recorded events used to calculate the AHI must be at least the number of events that would have been required in a two hour period (i.e., must reach 30 events without symptoms or 10 events with symptoms);

(i) Adherence to therapy is defined as use of PAP four hours or more per night on 70% of nights during a consecutive thirty day period anytime during the first three months of initial usage.

(4) Documentation Requirements:

(a) For PAP device rental:

(A) Initial coverage: Prior to the third date of service, submit the following:

(i) A facility-based polysomnogram report as described in this rule and scored as described in (1)(p) that supports a diagnosis of OSA;

(ii) For a RAD, specific documentation from the treating practitioner that a CPAP was tried and shown to be ineffective;

(B) For extended rental use of a PAP device beyond the first three months of initial therapy, submit the following documentation no sooner than the 61st day after initiating therapy and prior to the fourth date of service:

(i) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage data; and

(ii) Phone consultation record by the treating practitioner's medical staff which supports clinical benefit including client tolerance, compliance and efficacy and symptoms of OSA are improved; or

(iii) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment;

(b) For PAP device purchase: Submit the following:

(A) A facility-based polysomnogram report as described in this rule and scored as described in (1)(q) that supports a diagnosis of OSA; and

(B) After the initial three month trial period:

(i) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage data; and

(ii) Phone consultation record by the treating practitioner's medical staff which supports clinical benefit including client tolerance, compliance and efficacy and symptoms of OSA are improved; or

(iii) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment;

(C) Any other medical documentation that supports indications of coverage;

(c) If a CPAP device was used more than three months and the client is switched to a RAD, documentation of adherence to therapy must be submitted during the three month trial with the RAD;

(d) For a client using a PAP device prior to OHP enrollment, submit the following:

(A) Documentation of clinical benefit including client tolerance, compliance and efficacy and that symptoms of OSA are improved from the client's treating practitioner; and

(B) A facility-based polysomnogram report as described in this rule that supports a diagnosis of OSA, if available.

(5) **Table 122-0202 – PAP Devices.**

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2008(Temp), f. 12-17-08, cert. ef. 1-1-09 thru 6-15-09

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**Rule Caption:** Pharmacy Payments for New OHP Clients during the MMIS "data correction period."

**Adm. Order No.:** DMAP 1-2009(Temp)

**Filed with Sec. of State:** 1-5-2009

**Certified to be Effective:** 1-5-09 thru 1-12-09

**Notice Publication Date:**

**Rules Adopted:** 410-141-0425

**Subject:** The Oregon Health Plan (OHP) Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily adopted 410-141-0425 to ensure that new Oregon Health Plan (OHP) clients will be able to receive their prescriptions during the period of January 3, 2009 through January 12, 2009, otherwise known as the "Medicaid Management Information Systems (MMIS)



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data correction period.” Pharmacies will not release drugs to clients without proof of client eligibility and subsequent assurance of reimbursement from the State. To accommodate this during the specific dates of January 3, 2009 through January 12, 2009, DMAP Pharmacy providers must verify new client eligibility for clients who are identified in the Point-of-Sale (POS) system as a managed care client. This rule is in effect retroactively from January 3, 2009 through January 12, 2009. DMAP does not intend to file this rule permanently.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-141-0425

#### Pharmacy Payments During MMIS Enrollment Data Correction

This rule is in effect retroactively from January 3, 2009 through January 12, 2009.

(1) Pharmacy providers must verify new client eligibility for clients who are identified in the Point-of-Sale (POS) system as a managed care client. During the specific dates of January 3, 2009 through January 12, 2009, otherwise known as “MMIS data correction period,” DMAP pharmacy providers will verify new client eligibility for clients identified in POS as managed care clients by means of one or more of the following:

(a) By retaining a photocopy of the client’s December 2008 Medical Care ID (DMAP 1417 — old style, letter-sized) or Temporary Medical Care ID (DMAP 1086) if the client is able to present; or

(b) By contacting one of the following entities and obtaining proof of eligibility via fax:

(A) The member’s Managed Care Organization (MCO) (pharmacy benefits manager or the pharmacy program for the client’s MCO)\*\* ; or

(B) EDS-888-202-2126; or

(C) DMAP Client Services\*\* — 800-273-0557; or

(D) DMAP Provider Services\*\* — 800-336-6016.

\*\* Denotes during normal business hours.

(2) Pharmacy providers are authorized to fill prescriptions:

(a) To ensure that eligible MCO clients receive needed prescriptions during this MMIS data correction period, providers will fill up to a 30-day supply or the full Schedule II prescription for eligible clients not in the Point of Sale (POS) system. These prescriptions shall be filled based on current and individual MCO Formulary Lists, Prior Authorizations (PA) and associated pharmacy rules. DMAP remains responsible for carve-out drugs as provided in OAR 410-141-0070;

(b) The individual MCOs will reimburse pharmacies within their network for dispensing drugs on the service date providing they adequately perform the services described in (1) through (2) of this rule, between January 3, 2009 and January 12, 2009. The MCOs will reimburse only those pharmacies that are licensed to provide pharmacy services by the Oregon Board of Pharmacy on the date(s) of service(s).

(3) This reimbursement mechanism does not apply to clients who are only eligible for Citizen Alien Waived Emergent Medical (CAWEM) benefits as CAWEM does not provide prescription benefits, or any other benefit package that does not include prescriptions drugs.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110 & 414.065

Statutes Implemented: ORS 414.065

Hist.: DMAP 1-2009(Temp), f. & cert. ef. 1-5-09 thru 1-12-09

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**Rule Caption:** MMIS Alternative Process and Procedures.

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

**Filed with Sec. of State:** 1-12-2009

**Certified to be Effective:** 1-12-09 thru 7-1-09

**Notice Publication Date:**

**Rules Adopted:** 410-120-0027

**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 facilitate communication that is an exception to normal and ongoing communication and needs to be covered in rule. This rule is in concert with the newly adopted DHS rule OAR 407-120-0400 to ensure that Oregon Health Plan (OHP) clients will be able to receive consistent and uninterrupted service and that providers are assured their correct and appropriate reimbursement during episodes of the Medicaid Management Information System (MMIS) error or malfunction. DMAP intends to file this rule permanently on or before July 1, 2009.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-120-0027

#### Alternative Process and Procedure

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 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](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.

Stat. Auth.: ORS 409.025, 409.040, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 2-2009(Temp), f. & cert. ef. 12-12-09 thru 7-1-09

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

**Rule Caption:** Increase of the Application Fees Charged by the Certificate of Need Program.

**Adm. Order No.:** PH 19-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 333-565-0000

**Subject:** The Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rule 333-565-0000 in order to increase application fees for all projects undergoing a certificate of need review, except for projects undergoing abbreviated review. The fee for projects undergoing abbreviated review will remain unchanged.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

### 333-565-0000

#### Fees, Application for Certificate of Need

(1) The Public Health Division sets application fees for certificates of need (checks shall be payable to the Public Health Division).

(2) The application fees shall not be waived, except in the case of projects which are intended to predominantly serve medically indigent persons provided that such projects are eligible for abbreviated review under OAR 333-560-0010(1).

(3) Application fees shall not be refundable after the application is considered complete by the Division, except as provided under subsection (6)(b) of this rule.

(4) The application fee for projects shall be in accordance with the fee schedule contained in Table 4.

(5) An applicant who has submitted an application which was withdrawn before being declared complete may receive a refund of 90 percent of the application fee, less any legal fees incurred by the Division in review of the application or its letter of intent, provided that the applicant makes a written request for return of the fee. However, incomplete applications which are not completed within one year of their initial submission shall not be eligible for any refund of the fee.

(6) If the total project costs reported upon completion of the project under OAR 333-575-0000(8) differ by more than 10 percent from the costs projected in the initial application, the Division will:

(a) Order the applicant to pay an additional fee, if the actual costs upon completion would have required a higher fee under section (4) of this rule; or

(b) Make a refund to the applicant, if the actual costs upon completion would have resulted in a lower fee than that which was paid at the start of the review.

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

Stats. Implemented: ORS 443.120(6) & 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; OH 11-1998, f. & cert. ef. 10-22-98; PH 19-2008, f. 12-17-08, cert. ef. 1-1-09

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**Rule Caption:** Increase of the Construction Project Review Fees Charged by the Facilities Planning and Safety Program.

**Adm. Order No.:** PH 20-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 333-675-0050

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**Subject:** The Department of Human Service, Public Health Division is permanently amending Oregon Administrative Rule 333-675-0050 and Table 1 to increase construction project review fees for health care projects reviewed by the Facilities Planning & Safety Program. In addition, an amendment of the rule text updates an obsolete reference to a building cost guideline chart.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-675-0050

### Construction Project Review Fees

(1) The Public Health Division sets application fees for certificates of need (checks shall be payable to the Public Health Division).

(2) The application fees shall not be waived, except in the case of projects which are intended to predominantly serve medically indigent persons provided that such projects are eligible for abbreviated review under OAR 333-560-0010(1).

(3) Application fees shall not be refundable after the application is considered complete by the Division, except as provided under subsection (6)(b) of this rule.

(4) The application fee for projects shall be in accordance with the fee schedule contained in **Table 4**.

(5) An applicant who has submitted an application which was withdrawn before being declared complete may receive a refund of 90 percent of the application fee, less any legal fees incurred by the Division in review of the application or its letter of intent, provided that the applicant makes a written request for return of the fee. However, incomplete applications which are not completed within one year of their initial submission shall not be eligible for any refund of the fee.

(6) If the total project costs reported upon completion of the project under OAR 333-575-0000(8) differ by more than 10 percent from the costs projected in the initial application, the Division will:

(a) Order the applicant to pay an additional fee, if the actual costs upon completion would have required a higher fee under section (4) of this rule; or

(b) Make a refund to the applicant, if the actual costs upon completion would have resulted in a lower fee than that which was paid at the start of the review.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 431.120(6) & 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; PH 6-2004, f. & cert. ef. 3-11-04, Renumbered from 333-675-0010; PH 20-2008, f. 12-17-08, cert. ef. 1-1-09

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

**Rule Caption:** In-Home Services.

**Adm. Order No.:** SPD 15-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 411-030-0002, 411-030-0020, 411-030-0033, 411-030-0040, 411-030-0050, 411-030-0055, 411-030-0070, 411-030-0080, 411-030-0090, 411-030-0100

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending the in-home services rules in OAR chapter 411, division 030 to enhance SPD's ability to offer safer in-home services.

The permanent rules:

- Clearly define the employment responsibilities of an individual, or an individual's representative, for the individual to be eligible to receive in-home services provided by a homecare worker;

- Allow SPD to address unsafe in-home service plans; and

- Require case managers to provide information, choices, and resources to individuals desiring in-home services.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-030-0002

### Purpose

The rules in OAR chapter 411, division 030 ensure that in-home services maximize independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to eligible individuals. In-home services fill the role of complementing and

supplementing an individual's own personal abilities to continue to live in his or her own home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

## 411-030-0020

### Definitions

As used in these rules:

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(2) "Architectural Modifications" means any service leading to the alteration of the structure of a dwelling to meet a specific service need of the eligible individual.

(3) "Area Agency on Aging (AAA)" means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or people with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in 410.210 through 410.300.

(4) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living. Assistive devices include the use of service animals, general household items, or furniture to assist the individual.

(5) "Business Days" means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays.

(6) "Case Manager" means an employee of the Department of Human Services or Area Agency on Aging who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan, and monitors the services delivered.

(7) "Client" or "Client-Employer" means the individual eligible for in-home services. "Individual" is synonymous with client.

(8) "Client Assessment and Planning System (CA/PS)" is a single entry data system used for completing a comprehensive and holistic assessment, surveying the individual's physical, mental, and social functioning, and identifying risk factors, individual choices, and preferences, and the status of service needs. The CA/PS documents the level of need and calculates the individual's service priority level in accordance with OAR chapter 411, division 015, calculates the service payment rates, and accommodates individual participation in service planning.

(9) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(10) "Contingency Fund" means a monetary amount set aside in the Independent Choices Program service budget that continues month to month if approved by the case manager, to purchase identified items that substitute for personal assistance.

(11) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly contracted in-home services to individuals served by the Department of Human Services or Area Agency on Aging.

(12) "Cost Effective" means being responsible and accountable with Department of Human Services resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices include other programs available from the Department of Human Services, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department of Human Services.

(13) "DHS" means the Department of Human Services.

(14) "Discretionary Fund" means a monetary amount set aside in the Independent Choices Program service budget to purchase items not otherwise delineated in the monthly service budget or agreed to be savings for items not traditionally covered under waived services. Discretionary funds must be expended at the end of each month.

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(15) “Disenrollment” means either voluntary or involuntary termination of the participant from the Independent Choices Program.

(16) “DMAP” means the Division of Medical Assistance Programs.

(17) “Employee Provider” means a worker who provides services to, and is a paid provider for, a participant in the Independent Choices Program.

(18) “Employment Relationship” means the relationship involving the employee provider and the participant as employee and employer.

(19) “Exception” means an approval for payment of a service plan granted to a specific individual in their current residence (or in the proposed residence identified in the exception request) that exceeds the CA/PS assessed service payment levels for individuals residing in community-based care facilities or the maximum hours of service as described in OAR 411-030-0070 for individuals residing in their own homes. The approval is based on the service needs of the individual and is contingent upon the service plan meeting the requirements in OAR 411-027-0020, 411-027-0025, and 411-027-0050. The term “exception” is synonymous with “exceptional rate” or “exceptional payment.”

(20) “FICA” is the acronym for the Social Security payroll taxes collected under authority of the Federal Insurance Contributions Act.

(21) “Financial Accountability” refers to guidance and oversight which act as fiscal safeguards to identify budget problems on a timely basis and allow corrective action to be taken to protect health and welfare of individuals.

(22) “FUTA” is the acronym for Federal Unemployment Tax Assessment which is a United States payroll (or employment) tax imposed by the federal government on both employees and employers.

(23) “Homecare Worker (HCW)” means a provider, as described in OAR 411-031-0040, that provides either hourly or live-in services to eligible individuals and is employed by the individual. The term homecare worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. It also includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. Homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(24) “Hourly Services” means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(25) “Independent Choices Program (ICP)” means a self directed In-Home Services Program in which the participant is given a cash benefit to purchase goods and services identified in a service plan and prior approved by the Seniors and People with Disabilities Division or Area Agency on Aging case manager.

(26) “Individualized Back-Up Plan” means a plan incorporated into the Independent Choices Program service plan to address critical contingencies or incidents that pose a risk or harm to the participant’s health and welfare.

(27) “In-Home Services” means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(28) “Liability” refers to the dollar amount individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

(29) “Live-In Services” means those Client-Employed Provider Program services provided when an individual requires activities of daily living, self-management tasks, and twenty-four hour availability. Time spent by any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. To ensure continuity of service for the individual, live-in service plans must include at least one homecare worker providing twenty-four hour availability for a minimum of five days in a calendar week.

(30) “Natural Supports” or “Natural Support System” means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources that are not paid for by the Department of Human Services.

(31) “Oregon Project Independence (OPI)” means the program of in-home services described in OAR chapter 411, division 032.

(32) “Participant” means an individual eligible for Independent Choices Program services.

(33) “Provider” means the individual who actually renders the service.

(34) “Rate Schedule” means the rate schedule published by the Seniors and People with Disabilities Division at <http://www.oregon.gov/DHS/spd/provtools/rateschedule.pdf>.

(35) “Representative” is a person either appointed by the individual to participate in service planning on the individual’s behalf or the individual’s natural support with longstanding involvement in assuring the individual’s health, safety, and welfare. There are additional responsibilities for the Independent Choices Program representatives as described in OAR 411-030-0100. An ICP representative may not be a paid employee provider regardless of relationship to the participant.

(36) “Self-Management” or “Instrumental Activities of Daily Living (IADL)” means those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in self-management tasks are identified in OAR 411-015-0007.

(37) “Service Budget” means the participant’s plan for the distribution of authorized funds that are under the control and direction of the participant within the Independent Choices Program. The service budget is a required component of the service plan.

(38) “Service Need” means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and 411-015-0007.

(39) “SPD” means the Department of Human Services, Seniors and People with Disabilities Division.

(40) “SUTA” is the acronym for State Unemployment Tax Assessment. State unemployment taxes are paid by employers to finance the unemployment benefit system that exists in each state.

(41) “These Rules” means the rules in OAR chapter 411, division 030.

(42) “Twenty-Four Hour Availability” means the availability and responsibility of an employee to meet activities of daily living and self-management needs of an eligible individual as required by that person over a 24 hour period. Twenty-four hour availability services are provided by a live-in employee and are exempt from federal and state minimum wage and overtime requirements.

(43) “Waivered Services” means services provided through Oregon’s Medicaid Home and Community-Based Services Waiver under the authority of section 1915 (c) of the Social Security Act, that allows the state to provide home and community-based services to eligible individuals in place of nursing facility services. Waivered services include in-home services, residential care facility services, assisted living facility services, adult foster care services, home-delivered meals (when provided in conjunction with in-home services), specialized living services, Spousal Pay Program services, and adult day services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07; SPD 17-2007, f. 10-26-07, cert. ef. 10-28-07; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

### 411-030-0033

#### Program Scope

(1) In-home services are designed to provide essential supportive services that enable an individual to remain in his or her own home. In-home services range from assistance with household tasks to assistance with ADL. The extent of the services may vary from a few hours per week to full-time. Live-in services may be an option depending on the program.

(2) In-home services may be provided through the Home and Community-Based Services Waivered In-Home Services Program, Independent Choices Program, Spousal Pay Program, or Oregon Project Independence Program.

#### (3) PERMISSIBLE IN-HOME SERVICES LIVING ARRANGEMENTS.

(a) The following terms are used in this rule:

(A) “Informal arrangement” means a paid or unpaid arrangement for shelter or utility costs that does not include the elements of a property manager’s rental agreement.

(B) “Property manager’s rental agreement” means a payment arrangement for shelter or utility costs with a property owner, property manager, or landlord that includes all of the following elements:

(i) The name and contact information for the property manager, landlord, or leaser;

(ii) The period or term of the agreement and method for terminating the agreement;



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- (iii) The number of tenants or occupants;
- (iv) The rental fee and any other charges (such as security deposits);
- (v) The frequency of payments (such as monthly);
- (vi) What costs are covered by the amount of rent charged (such as shelter, utilities, or other expenses); and
- (vii) The duties and responsibilities of the property manager and the tenant, such as:

- (I) The person responsible for maintenance;
- (II) If the property is furnished or unfurnished; and
- (III) Advance notice requirements prior to an increase rent

(C) "Provider-owned dwelling" means a dwelling that is owned by the provider or the provider's spouse when the provider is proposing to be paid through waived services. The dwelling does not include the name of the individual on the property deed, mortgage, or title. Provider-owned dwellings include, but are not limited to:

- (i) Houses, apartments, and condominiums;
- (ii) A portion of a house such as basement or a garage even when remodeled to be used as a separate dwelling;
- (iii) Trailers and mobile homes; or
- (iv) Duplexes, unless the structure displays a separate address from the other residential unit and was originally built as a duplex.

(D) "Provider-rented dwelling" means a dwelling that is rented or leased by the provider or the provider's spouse when the provider is proposing to be paid through waived services. The dwelling does not include the name of the individual on the property manager's rental agreement.

(b) An individual residing in any of the following living arrangements shall not be eligible for the Home and Community-Based Services Waivered In-Home Services Program:

(A) The individual resides in a provider-owned dwelling. Such a setting may meet the requirements for a relative adult foster home or a limited adult foster home as described in OAR 411-050-0405; or

(B) The individual resides in a provider-rented dwelling through an informal arrangement.

(c) If the individual's name is added to the property deed, mortgage, title, or property manager's rental agreement, the individual may be considered for waived in-home services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

## 411-030-0040

### Eligibility Criteria

(1) In-home services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in these rules. Payments for in-home services are not intended to replace the resources available to an individual from their natural supports. Payment by SPD shall be considered or authorized only when natural supports are not available, not sufficient, or not developed to adequately meet the needs of an individual. An individual whose service needs are sufficiently and appropriately met by available natural supports shall not be eligible for in-home services. Service plans must be based upon the least costly means of providing adequate care.

(2) Individuals served under the Home and Community-Based Services Waivered In-Home Services Program or the Independent Choices Program must meet the established priorities for service as described in OAR chapter 411, division 015 and must:

(a) Be current recipients of OSIPM (Oregon Supplemental Income Program Medical);

(b) Reside in a living arrangement in which in-home services may be provided as described in OAR 411-030-0033; and

(c) Be eighteen years of age or older.

(3) To be eligible for the Home and Community-Based Services Waivered In-Home Services Program, an individual must employ an enrolled homemaker worker or contracted in-home care agency to provide the services prior authorized and paid for by SPD. To be eligible for the Independent Choices Program, participants must employ an employee provider or contracted in-home care agency.

(a) Initial eligibility for waived in-home services or the Independent Choices Program may not begin until a service plan has been authorized. The service plan must identify the provider who delivers the authorized services, and must include the date when the provision of services begins and the maximum number of hours authorized.

(b) If, for any reason, the employment relationship between the individual and provider is discontinued, an enrolled homemaker worker or contracted in-home care agency must be employed within 14 business days for the individual to remain eligible for in-home services. Participants of the Independent Choices Program must employ an employee provider within 14 business days.

(c) An eligible individual who has been receiving waived in-home services and temporarily enters a nursing facility or medical institution must employ an enrolled homemaker worker or contracted in-home care agency within 14 business days of discharge from the facility or institution. Participants of the Independent Choices Program must employ an employee provider within 14 business days of discharge.

### (4) EMPLOYER RESPONSIBILITIES.

(a) In order to be eligible for in-home services provided by a homemaker worker, an individual must be able to, or designate a representative to:

(A) Locate, screen, and hire a qualified homemaker worker;

(B) Supervise and train the homemaker worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the homemaker worker;

(E) Recognize, discuss, and attempt to correct, with the homemaker worker, any performance deficiencies; and

(F) Discharge unsatisfactory workers.

(b) Individuals who have demonstrated, after intervention and assistance, that they are unable to meet the responsibilities in section (4)(a) of this rule shall be determined ineligible for in-home services provided by a homemaker worker. Individuals ineligible for in-home services provided by a homemaker worker shall be offered other available, community-based service options that meet the individual's service needs, including contracted in-home care agency services when possible. As an alternative to community-based waived services, DHS may offer nursing facility services, if available, to meet an individual's service needs.

(c) Individuals determined ineligible for in-home services provided by a homemaker worker may request in-home services provided by a homemaker worker at the individual's next annual re-assessment. To be eligible for in-home services provided by a homemaker worker, individuals must appoint a representative or attend training, and acquire or otherwise demonstrate the ability to meet the employment responsibilities in section (4)(a) of this rule. Improvements in health and cognitive functioning may be factors in demonstrating the ability to meet employment responsibilities. If an individual is able to demonstrate the ability to meet employment responsibilities sooner than the next annual re-assessment, the waiting period may be shortened.

(d) An individual must designate a different representative or select other available services if the individual's designated representative is unable to meet the employer responsibilities in section (4)(a) of this rule.

### (5) REPRESENTATIVE.

(a) SPD may deny an individual's request for any representative if the representative has a history of a substantiated adult protective service complaint as described in OAR chapter 411, division 020. The individual shall be given the option to select another representative.

(b) Individuals with guardians must have a representative for service planning purposes. Guardians may designate themselves the representative.

(6) Additional eligibility criteria for in-home services exist for persons eligible for:

(a) Oregon Project Independence as described in OAR chapter 411, division 032;

(b) Independent Choices Program as described in OAR 411-030-0100; or

(c) Spousal Pay Program as described in OAR 411-030-0080.

(7) Residents of licensed community-based care facilities, nursing facilities, prisons, hospitals, and other institutions that provide assistance with ADL are not eligible for in-home services.

(8) Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93, Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 1-2006(Temp), f. & cert. ef. 1-13-06 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

# ADMINISTRATIVE RULES

## 411-030-0050

### Case Management

#### (1) ASSESSMENT.

(a) The assessment process must identify the individual's ability to perform ADL, self-management tasks, and determine the individual's ability to address health and safety concerns. The case manager must conduct this assessment in accordance with standards of practices established by SPD in OAR 411-015-0008.

(b) The assessment must be conducted by a case manager or other qualified SPD/AAA representative in the home of the eligible individual, no less than annually, with a standardized assessment tool approved by SPD.

#### (2) CONTRACT REGISTERED NURSE (RN) SERVICES.

(a) Contract RN services must be prior authorized by a SPD/AAA case manager and provided according to OAR chapter 411, division 048.

(b) Indicators of the need for contract RN services may include:

(A) Full assistance in cognition;

(B) Medical instability;

(C) Potential for skin breakdown or decubitus ulcer;

(D) Multiple health problems or frailty with a strong probability of deterioration; or

(E) Potential for increased self-care, but instruction and support for the individual are needed to reach goals.

(c) Maximum hours for each contracted RN service shall be established by SPD.

#### (3) SERVICE PLAN.

(a) The individual and case manager, with the assistance of others involved, must consider in-home service options as well as assistive devices, architectural modifications, and other community-based care resources to meet the service needs identified in the assessment process.

(b) The individual, or their representative, has the responsibility to choose and assist in developing less costly service alternatives, including the Client-Employed Provider Program and contracted in-home care agency services.

(c) The case manager has responsibility for determining eligibility for specific services, presenting alternatives to the individual, identifying risks, and assessing the cost effectiveness of the service plan. The case manager must monitor the service plan and make adjustments as needed.

(A) In implementing the service plan in accordance with 42 CFR 441.302, SPD must take necessary safeguards to protect the health, safety, and welfare of the individual.

(B) When an individual with the ability to make an informed decision selects a service choice that jeopardizes health and safety, SPD/AAA staff shall offer options to the individual in order to minimize those risks. For the purpose of this rule, an "informed decision" means the individual understands the benefits, risks, and consequences of the service choice selected.

(C) Options that minimize risks may include offering or recommending:

(i) Natural supports to provide assistance with safety or health emergencies;

(ii) An emergency response system;

(iii) A back-up plan for assistance with service needs;

(iv) Resources for emergency disaster planning;

(v) A referral for contract RN services;

(vi) Resources for provider training;

(vii) Assistive devices; or

(viii) Architectural modifications.

(d) SPD/AAA may not authorize a service provider, service setting, or a combination of services selected by the eligible individual or the representative when:

(A) The service setting has dangerous conditions that jeopardize the health or safety of the individual and necessary safeguards cannot be taken to improve the setting;

(B) Based on the extent of the service needs, or the choices or preferences of the eligible individual or the representative, services cannot be provided safely or adequately by the service provider;

(C) Dangerous conditions in the service setting jeopardize the health or safety of the service provider that is authorized and paid by SPD, and necessary safeguards cannot be taken to minimize the dangers; or

(D) The individual does not have the ability to make an informed decision, does not have a designated representative to make decisions on his or her behalf, and SPD/AAA cannot take necessary safeguards to protect the safety, health, and welfare of the individual.

(e) The case manager must present the individual or representative information on service alternatives and provide assistance to assess other

choices when the service provider or service setting selected by the individual or representative is not authorized.

(f) The service plan payment must be considered full payment for the services rendered under Title XIX. Under no circumstances is the employee to demand or receive additional payment for these Title XIX-covered services from the client-employer or any other source. Additional payment to homecare workers or Independent Choices Program employee providers for the same services covered by Oregon's Title XIX Home and Community-Based Services Waiver or Spousal Pay Programs is prohibited.

(g) For the Independent Choices Program, the service plan must include the service budget as per OAR 411-030-0100.

(h) SPD may not authorize a hardship shelter allowance associated with employing a live-in provider on or after June 1, 2006.

(i) Individuals eligible for and authorized to receive a hardship shelter allowance before June 1, 2006 may continue to receive a hardship shelter allowance on or after June 1, 2006 at the rate established by SPD if one of the following conditions is met:

(A) The individual shall be forced to move from their current dwelling and the individual's current average monthly rent or mortgage costs exceed current OSIP and OSIPM standards for a one-person need group as outlined in OAR 461-155-0250; or

(B) Service costs significantly increase as a result of the individual being unable to provide living quarters for a necessary live-in provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 12-1985(Temp), f. & ef. 9-19-85; SSD 16-1985, f. 12-31-85, ef. 1-1-86; SSD 4-1987(Temp), f. & ef. 7-1-87; SSD 1-1988, f. & cert. ef. 3-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 11-1989(Temp), f. & cert. ef. 9-1-89; SSD 18-1989, f. 12-29-89, cert. ef. 1-1-90; SSD 7-1990(Temp), f. & cert. ef. 3-1-90; SSD 16-1990, f. & cert. ef. 8-20-90; SSD 1-1992, f. & cert. ef. 2-21-92; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0022; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

## 411-030-0055

### Service Plan-Related Transportation

(1) Service-related transportation (non-medical) may be prior-authorized for reasons related to an eligible individual's safety or health, in accordance with a service plan. Such services shall be offered through contracted transportation providers or by homecare workers.

(2) Service-related transportation may be authorized to assist an eligible individual in getting to and from the individual's place of employment when that individual is approved for the Employed Persons with Disabilities Program (OSIPM-EPD).

(3) Natural supports, volunteer transportation, and other transportation services available to the eligible individual shall be considered a prior resource and must not be replaced with transportation paid by DHS.

(a) DMAP is a prior resource for medical transportation to a physician, hospital, clinic, or other medical service provider. Medical transportation costs may not be reimbursed through service-related transportation.

(b) DHS may not provide service-related transportation to obtain medical or non-medical items that may be delivered by a supplier or sent by mail order without cost to the eligible individual.

(c) Transportation must be prior authorized by the case manager and documented in the service plan. Under no circumstances shall any provider receive payment from DHS for more than the total number of hours, miles, or rides authorized by SPD/AAA in the service plan.

(a) Contracted transportation providers must be reimbursed according to the terms of their contract with DHS. Service transportation services provided through contracted transportation providers must be authorized by the case manager based on an estimate of a total count of one way rides per month.

(b) Homecare workers must be reimbursed according to the terms defined in their collective bargaining agreement when they use their own personal vehicle for service-related transportation. Any mileage reimbursement authorized to a homecare worker must be based on an estimate of the monthly maximum miles required to drive to and from the destination authorized in the service plan. Transportation hours are authorized in accordance with OAR 411-030-0070.

(c) SPD/AAA shall not authorize reimbursement for travel to or from the residence of the homecare worker. Transportation and mileage may only be authorized from the home of the eligible individual to the destination authorized in the service plan and back to the eligible individual's home.

(5) DHS is not responsible for any vehicle damage or personal injury sustained while using a personal motor vehicle for service-related transportation.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 410.010, 410.020 & 410.070  
Hist.: SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

## 411-030-0070

### Maximum Hours of Service

#### (1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.

(a) "Minimal Assistance" means the individual is able to perform the majority of an activity, but requires some assistance from another person.

(b) "Substantial Assistance" means the individual can perform only a small portion of the tasks that comprise the activity without assistance from another person.

(c) "Full Assistance" means the individual needs assistance from another person through all phases of the activity, every time the activity is attempted.

#### (2) MAXIMUM MONTHLY HOURS FOR ADL.

(a) The planning process uses the following limitations for time allotments for ADL tasks. Hours authorized must be based on the service needs of the individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

##### (A) Eating:

- (i) Minimal assistance — 5 hours;
- (ii) Substantial assistance — 20 hours;
- (iii) Full assistance — 30 hours;

##### (B) Dressing/Grooming:

- (i) Minimal assistance — 5 hours;
- (ii) Substantial assistance — 15 hours;
- (iii) Full assistance — 20 hours;

##### (C) Bathing and Personal Hygiene:

- (i) Minimal assistance — 10 hours;
- (ii) Substantial assistance — 15 hours;
- (iii) Full assistance — 25 hours;

##### (D) Mobility:

- (i) Minimal assistance — 10 hours;
- (ii) Substantial assistance — 15 hours;
- (iii) Full assistance — 25 hours;

##### (E) Elimination (Toileting, Bowel, and Bladder):

- (i) Minimal assistance — 10 hours;
- (ii) Substantial assistance — 20 hours;
- (iii) Full assistance — 25 hours;

##### (F) Cognition/Behavior:

- (i) Minimal assistance — 5 hours;
- (ii) Substantial assistance — 10 hours;
- (iii) Full assistance — 20 hours.

(b) Service plan hours for ADL may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. In accordance with section (3)(c) of this rule, authorization of self-management hours shall be limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at hourly rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the hourly rates. Participants of the Independent Choices Program may determine their own employee provider pay rates.

#### (3) MAXIMUM HOURS FOR SELF MANAGEMENT TASKS.

(a) The planning process uses the following limitations for time allotments for all services. Hours authorized are based on the service needs of the individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

##### (A) Medication and Oxygen Management:

- (i) Minimal assistance — 2 hours;
- (ii) Substantial assistance — 4 hours;
- (iii) Full assistance — 6 hours;

##### (B) Transportation or Escort Assistance:

- (i) Minimal assistance — 2 hours;
- (ii) Substantial assistance — 3 hours;
- (iii) Full assistance — 5 hours;

##### (C) Meal Preparation:

(i) Minimal assistance—breakfast — 4 hours, lunch — 4 hours, supper — 8 hours;

(ii) Substantial assistance—breakfast — 8 hours, lunch — 8 hours, supper — 16 hours;

(iii) Full assistance—breakfast — 12 hours, lunch — 12 hours, supper — 24 hours;

##### (D) Shopping:

- (i) Minimal assistance — 2 hours;
- (ii) Substantial assistance — 4 hours;
- (iii) Full assistance — 6 hours;

##### (E) Housecleaning:

- (i) Minimal assistance — 5 hours;
- (ii) Substantial assistance — 10 hours;
- (iii) Full assistance — 20 hours.

(b) Rates shall be paid in accordance with the rate schedule. When a live-in employee is present, these hours may be paid at less than minimum wage according to the Fair Labor Standards Act. The Independent Choices Program cash benefit is based on the hours authorized for self management tasks paid at the hourly rates. Participants of the Independent Choices Program may determine their own employee provider pay rates.

(c) When two or more individuals eligible for self-management task hours live in the same household, the assessed self-management need of each individual must be calculated. Payment shall be made for the highest of the allotments and a total of four additional self-management hours per month for each additional individual to allow for the specific self-management needs of the other individuals.

(d) Service plan hours for self-management tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that self-management task as determined by a service assessment applying the parameters in OAR 411-015-0007.

#### (4) TWENTY-FOUR HOUR AVAILABILITY.

(a) Payment for twenty-four hour availability shall be authorized only when an individual employs a live-in homecare worker or Independent Choices Program employee provider and requires twenty-four availability due to the following:

(A) The individual requires assistance with ADL or self-management tasks at unpredictable times throughout most 24 hour periods; and

(B) The individual requires minimal, substantial, or full assistance with ambulation and requires assistance with transfer (as defined in OAR 411-015-0006); or

(C) The individual requires full assistance in transfer or elimination (as defined in OAR 411-015-0006); or

(D) The individual requires full assist in at least three of the eight components of cognition/behavior (as defined in OAR 411-015-0006).

(b) The number of hours allowed per month shall have the following maximums. Hours authorized are based on the service needs of the individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Minimal assistance — 60 hours. Minimal assistance hours may be authorized when an individual requires one of these assessed needs as defined in OAR 411-015-0006:

- (i) Full assist in cognition; or
- (ii) Full assist in toileting or bowel or bladder.

(B) Substantial assistance — 110 hours. Substantial assistance hours may be authorized when an individual requires these assessed needs as defined in OAR 411-015-0006:

- (i) Assist in transfer; and
- (ii) Assist in ambulation; and
- (iii) Full assist in cognition; or
- (iv) Full assist in toileting or bowel or bladder.

(C) Full assistance — 159 hours. Full assistance hours may be authorized when:

(i) The authorized provider cannot get at least five continuous hours of sleep in an eight hour period during a 24-hour work period; and

(ii) The eligible individual requires these assessed needs as defined in OAR 411-015-0006:

- (I) Full assist in transfer; and
- (II) Assist in mobility; or
- (III) Full assist in toileting or bowel or bladder; or
- (IV) Full assist in cognition.

(c) Service plans that include full-time live-in homecare workers or Independent Choices Program employee providers must include a minimum of 60 hours per month of twenty-four hour availability. When a live-in homecare worker or Independent Choices Program employee provider is employed less than full time, the hours must be pro-rated. Full-time means the live-in homecare worker is providing services to the client-employer seven days per week throughout a calendar month.



## ADMINISTRATIVE RULES

(d) Rates for twenty-four hour availability shall be in accordance with the rate schedule and paid at less than minimum wage according to the Fair Labor Standards Act and ORS 653.020(2).

(e) Twenty-four hour availability assumes the homecare worker is available to address the service needs of an individual as they arise throughout a 24 hour period. A homecare worker who engages in employment outside the eligible individual's home or building during the work periods he or she is on duty as a homecare worker, is not considered available to meet the service needs of the individual.

(5) Under no circumstances shall any provider receive payment from SPD for more than the total amount authorized by SPD on the service plan authorization form. All service payments must be prior-authorized by SPD/AAA.

(6) **AUTHORIZED HOURS ARE SUBJECT TO THE AVAILABILITY OF FUNDS.** Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) which could reduce the individual's reliance on paid in-home services hours.

(7) SPD may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within the individual's natural supports system.

(8) Payment by SPD for waived in-home services shall only be made for those tasks described in this rule as ADL, self-management tasks, and twenty-four hour availability. Services must be authorized to meet the needs of the eligible individual and may not be provided to benefit the entire household.

### (9) EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for ADL may exceed the full assistance hours (defined in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by SPD central office when the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050 is met.

(c) Monthly service plans that exceed 389 hours per month for a live-in homecare worker or Independent Choices Program employee provider, or that exceed the equivalent monthly service payment for an hourly services plan, may be approved by SPD central office when the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050 is met.

(d) As long as the total number of self-management task hours in the service plan does not exceed 85 hours per month and the service need is documented, the hours authorized for self-management tasks may exceed the hours for full assistance (as defined in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that jeopardize the health of the individual; or

(C) Extraordinary self-management needs in medication management or service-related transportation.

(e) Monthly service plans that exceed 85 hours per month in self-management tasks may be approved by SPD central office when the individual meets the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDSD 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDSD 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

### 411-030-0080

#### Spousal Pay Program

(1) The Spousal Pay Program is one of the live-in service options under in-home services for those who qualify.

(2) For the purposes of the Spousal Pay Program, a spouse is defined as a person who is legally married per OAR 461-001-0000 to an individual eligible for the In-Home Support Services Program.

(3) An individual may be eligible for the Spousal Pay Program when all of the following conditions are met:

(a) The individual has met all program requirements of the In-Home Support Services Program;

(b) As determined by an assessment described in OAR chapter 411, division 015, the individual requires full assistance in at least four of the six ADL described in OAR 411-015-0006;

(c) The individual would otherwise require nursing facility services without home and community-based waived in-home services;

(d) The individual has a medically-diagnosed, progressive, debilitating condition that limits additional ADL, or has experienced a spinal cord injury or similar disability with permanent impairment of the ability to perform ADL;

(e) At the time of requesting enrollment in the Spousal Pay Program, the individual is determined, through a pre-admission screening (PAS) assessment (as defined in OAR 411-070-0005) to meet the requirements described in sections (3)(b), (3)(c) and (3)(d) of this rule. The PAS assessment is a second, independent assessment, conducted by a SPD/AAA representative using the CA/PS;

(f) The individual's service needs exceed in both extent and duration the usual and customary services rendered by one spouse to another;

(g) The spouse demonstrates the capability and health to provide the services and actually provides the principal services, including the majority of service plan hours, for which payment has been authorized;

(h) The spouse meets all requirements for enrollment as a homecare worker in the Client-Employed Provider Program as described in OAR 411-031-0040; and

(i) SPD central office has reviewed the request and approved program eligibility at enrollment and annually upon re-assessment.

### (4) PAYMENTS.

(a) All payments must be prior authorized by SPD or SPD's designee.

(b) The hours authorized in the service plan must consist of one-half of the assessed hours for twenty-four hour availability, one-half of the assessed hours for self-management tasks, plus all of the hours for specific ADL based on the service needs of the individual.

(c) Spousal pay providers are paid at live-in homecare worker rates as bargained in the 2007-2009 Collective Bargaining Agreement between the Home Care Commission and Service Employees International Union, Local 503, OPEU for ADL, self-management tasks, and twenty-four hour availability, except as described otherwise in section (4)(d) of this rule.

(d) Homecare workers who marry their client-employer retain the same standard of compensation, if their employer meets the spousal pay eligibility criteria as described in section (3) of this rule. Additional self-management task hours may be authorized in the service plan when necessary to prevent a loss of compensation to the homecare worker following marriage to the client-employer.

(e) Spousal pay providers must not claim payment from DHS for:

(A) Hours that the spousal pay provider did not work;

(B) Time spent arranging coverage to meet the client-employer's needs; or

(C) Services provided to the individual by substitute providers.

(f) DHS is not responsible for payment of a substitute provider during interim absences while the spousal pay provider is taking leave without pay. As used in this rule, "leave without pay" means time that is not covered by the spousal pay homecare worker's live in paid leave benefit. During these interim absences when the spouse needs to secure a substitute provider to perform the authorized duties normally performed by the spousal pay provider, the spouse must arrange for adequate coverage to meet the service needs and pay the substitute provider for periods of leave without pay.

(5) Individuals receiving Spousal Pay Program services who have excess income must contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.802 & 411.803

Hist.: SSD 4-1984, f. 4-27-84, ef. 5-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0027; SDSD 2-2000, f. 3-27-00, cert. ef. 4-1-00; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07; SPD 17-2007, f. 10-26-07, cert. ef. 10-28-07; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

### 411-030-0090

#### Contracted In-Home Care Agency Services

(1) Contracted in-home care agency services are one of the in-home service options for individuals eligible for Oregon's Home and Community-Based Services Waiver.

(2) In-home care agencies must be licensed in accordance with OAR chapter 333, division 536. The geographic service area in which the agency provides services must comply with OAR 333-536-0050. The specific services provided must be described in each contract's statement of work.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

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Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 2-2007(Temp), f. & cert. ef. 3-30-07 thru 9-25-07; SPD 13-2007, f. 8-31-07, cert. ef. 9-4-07; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

## 411-030-0100

### Independent Choices Program

(1) The Independent Choices Program (ICP) is an In-Home Services Program that empowers participants to self-direct their own service plans and purchase goods and services that enhance independence, dignity, choice, and well-being.

(2) The ICP is limited to a maximum of 2,600 participants.

(a) SPD shall establish and maintain a waiting list for individuals eligible for in-home services requesting ICP after the ICP has reached its maximum.

(b) SPD shall enter names on the waiting list according to the date submitted by the SPD/AAA office.

(c) As vacancies occur, eligible individuals on the waiting list shall be offered the ICP in order according to their place on the waiting list.

(d) Individuals on the waiting list may receive services through other appropriate DHS programs for which they are eligible.

#### (3) INITIAL ELIGIBILITY REQUIREMENTS.

(a) To be eligible for the ICP an individual must:

(A) Meet all program requirements of the In-Home Services Program in these rules;

(B) Develop a service plan and budget to meet the needs identified in the CA/PS assessment;

(C) Sign the ICP participation agreement;

(D) Have or be able to establish a checking account;

(E) Provide evidence of a stable living situation for the past three months; and

(F) Demonstrate the ability to manage money as evidenced by timely and current utility and housing payments.

(b) If the participant is unable to direct and purchase his or her own in-home services, the participant must have a representative to act on the participant's behalf. The "representative" is the person assigned by the participant to act as the participant's decision maker in matters pertaining to the ICP service plan and service budget. A representative must:

(A) Complete a criminal history check pursuant to OAR chapter 407, division 007 and receive a final fitness determination of approval; and

(B) Sign and adhere to the "Independent Choices Program Representative Agreement" on behalf of the participant.

(c) If the participant is unable to manage ICP cash payment accounting, tax, or payroll responsibilities and does not have a representative, the participant must arrange and purchase the ongoing services of a fiscal intermediary, such as an accountant, bookkeeper, or equivalent financial services. Participants, or their representative, who have met the eligibility criteria in section (3)(b) of this rule, may also choose to use a fiscal intermediary. The participant is responsible for any fees or payment to the fiscal intermediary and may allocate the fees or payment from their discretionary funds or other non ICP funds.

(4) **DISENROLLMENT CRITERIA.** Participants may be disenrolled from the ICP voluntarily or involuntarily. Participants who are disenrolled from the ICP may not reapply for six months. After the six month disenrollment period, an individual may re-enroll and must meet all ICP eligibility requirements. If the ICP enrollment cap has been reached, participants who were disenrolled shall be added to the waiting list.

(a) **Voluntary disenrollment.** Participants or representatives must provide notice to SPD of intent to discontinue participation. The participant or the representative must meet with SPD to reconcile remaining ICP cash payment either within 30 days of the date of disenrollment or before the termination date, whichever is sooner.

(b) **Involuntary disenrollment.** The participant may be involuntarily disenrolled from the ICP when the participant, representative, or employee provider does not adequately meet the participant's service needs or carry out the following ICP responsibilities:

(A) Non-payment of employee's wages, as stated in the service budget.

(B) Failure to maintain health and well-being by obtaining personal care as evidenced by:

(i) Decline in functional status due to the failure to meet the participant's needs; or

(ii) Substantiated complaints of self-neglect or neglect or other abuse on the part of the employee provider or representative.

(C) Failure to purchase goods and services according to the service plan;

(D) Failure to comply with the legal or financial obligations as an employer;

(E) Failure to maintain a separate ICP checking account or commingling ICP cash benefit with other assets;

(F) Inability to manage the cash benefit as evidenced by two or more incidents of overdrafts of the participant's ICP checking account during the last cash benefit review period;

(G) Failure to deposit monthly service liability payment into the ICP checking account;

(H) Failure to maintain an individualized back-up plan (as part of the service plan) resulting in a negative consequence;

(I) Failure to sign or follow the ICP Participation Agreement; and

(J) Failure to select a representative within 30 days if a participant needs a representative and does not have one.

(5) **INTERRUPTION OF SERVICES.** When a participant is absent from the home for longer than 30 days due to illness or medical treatment, the ICP cash benefit shall be terminated. The cash benefit may resume upon return to the home, providing ICP eligibility criteria is met.

#### (6) SELECTION OF EMPLOYEE PROVIDERS.

(a) The participant or representative carries full responsibility for locating, screening, interviewing, hiring, training, paying, and terminating employee providers. The participant or representative must comply with Immigration and Customs Enforcement laws and policies.

(b) The participant or representative must assure the employee provider's ability to perform or assist with ADL, self-management, and twenty-four hour availability needs.

(c) Employee providers must complete a criminal history check pursuant to OAR chapter 407, division 007. If a record of a potentially disqualifying crime is revealed, the participant or representative may employ the provider at the participant's or representative's discretion.

(d) A representative may not be an employee provider regardless of relationship to the participant.

(e) Participant's relatives may be employed as employee providers.

#### (7) CASH BENEFIT.

(a) The cash benefit is determined based on the CA/PS assessment of need, the service plan, the level of assistance standards in OAR 411-030-0070, and natural supports.

(b) The cash benefit is calculated by adding the ADL task hours, the self-management task hours, and the twenty-four hour availability hours that the participant is eligible for as determined in the CA/PS assessment, at the rates according to the SPD rate schedule.

(c) The following services, which are approved by the case manager and paid for by SPD, are excluded from ICP cash benefit:

(A) Community health supports;

(B) Contracted non-medical waiver service transportation;

(C) Home delivered meals; and

(D) Emergency response systems.

(d) The cash benefit shall include the employer's portion of required FICA, FUTA, and SUTA.

(e) The cash benefit shall be directly deposited into the participant's ICP designated checking account.

#### (8) SERVICE BUDGET.

(a) The service budget must identify the cash benefit, the discretionary and contingency funds if applicable, the reimbursement to an employee provider, and all other expenditures. The service budget must be initially approved by SPD/AAA staff.

(b) The participant may amend the service budget as long as the amendments relate to meeting the service needs and are within ICP program guidelines.

(c) A budget review to assure financial accountability and review service budget amendments must be completed at least every six months.

#### (9) CONTINGENCY FUND.

(a) The participant may establish a contingency fund in the service budget to purchase identified items that are not otherwise covered by Medicaid or food stamps that substitute for personal assistance and allow for greater independence.

(b) The contingency fund must be approved by the case manager, identified in the service budget, and related to service plan needs.

(c) Contingency funds may be carried over into the next month's budget until the item is purchased.

#### (10) DISCRETIONARY FUND.

(a) The participant may establish a monthly discretionary fund in the service budget to purchase items that directly relate to the health, safety, and independence of the participant and are not otherwise covered under waived services or delineated in the monthly service budget.

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(b) The maximum amount of discretionary funds may be up to 10 percent of the participant's cash benefit not including employee taxes.

(c) The discretionary fund must be approved by the case manager, identified in the service budget, and related to service plan needs.

(d) Discretionary funds must be used by the end of the month.

### (11) ISSUING BENEFITS.

(a) The service plan and service budget must be prior approved by the case manager before the first ICP cash benefit is paid.

(b) A cash benefit is considered issued and received by the participant when the direct deposit is made to the participant's ICP bank account or a benefit check is received by the participant.

(c) The cash benefit is exempt from resource calculations for other DHS programs only while in the ICP bank account and not commingled with other personal funds.

(d) The cash benefit is not subject to assignment, transfer, garnishment, or levy as long as it can be identified as a program benefit and is separate from other money in the participant's possession.

### (12) CASE MANAGER RESPONSIBILITIES.

(a) The case manager is responsible to review and authorize service plans and service budgets that meet the ICP program criteria.

(b) If a participant is disenrolled, the case manager must review eligibility for other Medicaid long term care and community-based service options and offer other alternatives if the participant is eligible.

(c) At least every six months, SPD/AAA staff must complete a service budget review to assure financial accountability and review service budget amendments.

(13) HEARING RIGHTS. ICP participants have contested case hearing rights as described in OAR chapter 461, division 025.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09

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**Rule Caption:** Rescinding the Licensing Moratorium for Residential Care and Assisted Living Facilities.

**Adm. Order No.:** SPD 16-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 411-054-0005, 411-054-0012, 411-054-0105

**Rules Repealed:** 411-054-0008

**Subject:** To comply with House Bill 3626 (2008 Special Session), the Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-054-0005 and OAR 411-054-0012 and repealing OAR 411-054-0008 to rescind the licensing moratorium for residential care and assisted living facilities.

SPD is also permanently amending OAR 411-054-0105 to correct a grammatical error.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

### 411-054-0005

#### Definitions

For the purpose of these rules, the following definitions apply:

(1) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department of Human Services to perform specific activities in relation to residential care and assisted living facilities including: conducting inspections and investigations regarding protective service, abuse, and neglect; monitoring; and making recommendations to the Seniors and People with Disabilities Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would be able to prevent, such as those resulting from hitting, pinching, striking, rough handling, or corporal punishment. These instances of abuse are presumed to cause physical injury, including pain, to all residents, including those in a coma or those who are otherwise incapable of expressing injury or pain.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity. Abuse under this definition includes abandonment.

(c) Sexual contact with a resident, including fondling, by an employee or agent of a facility by: physical force; physical or verbal threat of harm or deprivation to the resident or others; use of position, authority, or misinformation to compel a resident to do what the resident would not otherwise do; or where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.

(d) Theft or diversion of a resident's property, including money, personal property, and medications; illegal or improper use of a resident's resources for the personal benefit, profit, or gain of another person; borrowing resident funds; spending resident funds without the resident's consent; if the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal or mental abuse that includes, in extreme forms: the use of oral, written, or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within their hearing distance, regardless of their age, ability to comprehend, or disability; humiliation; intimidation; harassment; threats of punishment or deprivation directed toward the resident; and unwanted or inappropriate crude or sexual language, questions, comments, or other communication. Examples of verbal and mental abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that the resident may never be able to see the resident's family again; and making unwanted sexual comments. Verbal and mental abuse is distinguished from resident rights violations by the extreme or offensive nature of the communication.

(f) Involuntary seclusion for convenience or discipline. Involuntary seclusion is defined as the separation of a resident from other residents or from their room or confinement to their room (with or without roommates) against the resident's will or the will of the resident's legal representative. Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention until professional staff develop a plan of care to meet the resident's needs, or as part of an interdisciplinary care plan after other interventions have been attempted.

(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(4) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.

(5) "Assisted Living Facility" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult persons with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(6) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.

(7) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.

(8) "Change of Condition — Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(9) "Change of Condition — Significant" means a major deviation from the most recent evaluation that may affect multiple areas of function-



## ADMINISTRATIVE RULES

ing or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to: broken bones; stroke, heart attack, or other acute illness or condition onset; unmanaged high blood sugar levels; uncontrolled pain; fast decline in activities of daily living; significant unplanned weight loss; pattern of refusing to eat; level of consciousness change; and pressure ulcers (stage 2 or greater).

(10) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(11) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(12) "DHS" means the Department of Human Services.

(13) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy supports dignity, as does delivering services in a manner that shows courtesy and respect.

(14) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include: medication administration; resident-focused activities; assistance with activities of daily living; supervision and support of residents; and serving meals, but not meal preparation.

(15) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.

(16) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(17) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.

(18) "Exception" means a written variance granted by the Seniors and People with Disabilities Division from a regulation or provision of these rules.

(19) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.

(20) "FPS" means the Facilities Planning and Safety Program within the Department of Human Services, Public Health Division.

(21) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(22) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(23) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(24) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(25) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(26) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(27) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(28) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(29) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(30) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes). Modified special diets

include, but are not limited to: small frequent meals; no added salt; reduced or no added sugar; and simple textural modifications. Medically complex diets are not included.

(31) "New Construction" means a new building; an existing building or part of a building that is not currently licensed; a major alteration to an existing building; or additions, conversions, renovations, or remodeling of existing buildings.

(32) "Nursing Care" means the practice of nursing as governed by ORS Chapter 678 and OAR chapter 851, division 047.

(33) "Owner" means a person with an ownership interest.

(34) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(35) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(36) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(37) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(38) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, antipsychotics, sedatives, hypnotics, and anti-anxiety medications.

(39) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(40) "Residential Care Facility" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a home-like surrounding where six or more seniors and adult persons with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(41) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(42) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.).

(43) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(44) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(45) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036 that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(46) "Services" means supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(47) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(48) "These Rules" means the rules in OAR chapter 411, division 054.

(49) "Underserved" means services are significantly unavailable within the service area in a comparable setting for the general public, a specific population, including, residents with dementia, traumatic brain injury, or recipients of Medicaid.

(50) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.

(51) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09

# ADMINISTRATIVE RULES

## 411-054-0012

### Requirements for New Construction or Initial Licensure

(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed residential care or assisted living facility, must request a meeting with SPD before submitting a letter of intent as described in section (3) of this rule.

(2) Prior to beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must meet the following criteria to receive approval from SPD for a potential license:

(a) Applicants must demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and

(b) The applicant, including applicants for change of ownership of existing licensed facilities, must provide a letter of intent as set forth in section (3) of this rule, and demonstrate a willingness to provide care and services for an underserved population.

(3) LETTER OF INTENT. Prior to application for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to SPD a letter of intent that includes the following:

(a) Identification of potential applicant;

(b) Identification of the city and street address of the intended facility;

(c) Intended facility type (e.g., residential care, assisted living, Alzheimer's Endorsed), the intended number of units, and maximum resident capacity;

(d) Description of the underserved population the applicant is requesting to service;

(e) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population; and

(f) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.

(4) MARKET ANALYSIS. The applicant must submit a current market analysis to SPD for review and consideration prior to application for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must show the need for the services offered by the license applicant and must include:

(a) Description of the intended population to be served, including special needs population as applicable;

(b) A current demographic overview of the area to be served;

(c) A description of the area and regional economy and the effect on the market for the project;

(d) Identification of the number of persons in the area to be served who are potential residents;

(e) Description of available amenities (e.g., transportation, hospital, shopping center, traffic conditions, etc.);

(f) Description of the extent, types, and availability of existing and proposed residential care and assisted living facilities located in the area to be served, as defined in ORS 443.400 to 443.455; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(5) SPD shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.

(a) If the applicant is dissatisfied with the decision of SPD, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.

(b) The contested case hearing shall be in accordance with ORS chapter 183.

(6) SPD shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules prior to issuing a license.

(7) BUILDING PLANS. After the letter of intent has been submitted to SPD, one set of building plans and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.

(a) Building plans must be submitted to FPS:

(A) Prior to beginning construction of any new building;

(B) Prior to beginning construction of any addition to an existing building;

(C) Prior to beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

(D) Subsequent to application for an initial license of a facility not previously licensed under this rule.

(b) Plans must comply with the Oregon Structural Specialty Code and Oregon Fire Code as required for the occupancy classification and construction type.

(c) Plans must be drawn to a scale of one-fourth inch or one-eighth inch to the foot, and must specify the date when construction, modification, or conversion is expected to be completed.

(d) Construction containing 4,000 square feet or more must be prepared by, and bear the stamp of, an Oregon licensed architect or engineer.

(8) SIXTY-DAYS PRIOR. At least 60 days prior to anticipated licensure the applicant must submit to SPD:

(a) A completed application form with the required fee;

(b) A copy of the facility's written rental agreements;

(c) Disclosure information; and

(d) Facility policies and procedures, ensuring that the facility's administrative, personnel, and resident care operations are conducted in compliance with these rules.

(9) THIRTY-DAYS PRIOR. Thirty days prior to anticipated licensure the applicant must submit:

(a) To SPD, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a criminal history request; and

(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests that an onsite licensing inspection be scheduled.

(10) TWO-DAYS PRIOR. At least two working days prior to the scheduled onsite licensing inspection of the facility the applicant must submit to SPD and FPS, a completed and signed Project Completion/Inspection Checklist that confirms that the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and SPD.

(b) The onsite licensing inspection may be rescheduled at SPD's convenience if the scheduled, onsite licensing inspection reveals that the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.

(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to SPD and FPS, a copy of the Certificate of Occupancy issued by the Building Codes Agency having jurisdiction that indicates the intended occupancy classification and construction type.

(12) CONFIRMATION OF LICENSURE. The applicant, prior to admitting any resident into the facility, must receive a written confirmation of licensure issued by SPD.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09

## 411-054-0105

### Inspections and Investigations

(1) The facility must cooperate with SPD personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(a) Records must be made available to SPD upon request. SPD personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement shall result in regulatory action.

(b) The State Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian.

(c) The State Fire Marshal or authorized representative must be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(2) Staff of SPD shall visit and inspect every facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules.

(a) Facilities not in compliance with these rules must submit a plan of correction that satisfies SPD, within ten days of receipt of the inspection report.

(b) In addition, SPD may impose sanctions for failure to comply with these rules.

(3) SPD staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment, and other areas of operation.

# ADMINISTRATIVE RULES

(4) A copy of the most current inspection report and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09

## Department of Justice Chapter 137

**Rule Caption:** Clarifies requirements for review and modification of support orders and advance payments of child support.

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

**Filed with Sec. of State:** 1-2-2009

**Certified to be Effective:** 1-2-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 137-055-3420, 137-055-6210

**Rules Repealed:** 137-055-3420(T), 137-055-6210(T)

**Subject:** OAR 137-055-03420 is being amended to two reasons: first to clarify that a periodic review to ensure compliance with the child support guidelines will be initiated on a support order for a family receiving Temporary Assistance to Needy Families (TANF) when the order is at least 35 months old, rather than 336 months old. This change was proposed during the department's last rulemaking, but is being re-noticed to go with the next proposed amendment, which is to clarify that the administrator will (rather than may) initiate a periodic review in a non-TANF case when 35 months have expired since the order first took effect or was last reviewed and a party submits a written request for review.

OAR 137-055-6210 is being amended to clarify that the department will collect the amount of any advance payment from the person who received it by removing the amount from the arrears owed to the payee, temporarily-assigned arrears or conditionally-assigned arrears and assigning that amount to the state as permanently assigned arrears under OAR 137-055-6010.

**Rules Coordinator:** Vicki Tungate — (503) 986-6086

### 137-055-3420

#### Periodic Review and Modification of Child Support Order Amounts

(1) In addition to the definitions found in ORS 25.321, OAR 137-050-0320, 137-050-0410 and 137-050-0430, for the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review, which finds that the current order of support is in "substantial compliance" with the Oregon guidelines and appropriate health care coverage or cash medical support is ordered against one or both parties.

(b) "Guidelines" means the formula, the scale, and related provisions in OARs 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through appropriate health care coverage or cash medical support regardless of whether an adjustment in the amount of child support is necessary.

(e) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or \$50 formula will be applied to the currently ordered support amount.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program (CSP) will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the CSP will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to ensure substantial compliance with Oregon's child support guidelines, or to order appropriate health care coverage or cash medical support for the child(ren).

(4) The administrator will initiate a periodic review if a written request for periodic review is received from any party and 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted.

(5) The administrator will initiate a periodic review when 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted, and the family is currently receiving TANF.

(6) The administrator must complete the determination that the order is in substantial compliance with the guidelines and appropriate health care coverage or cash medical support is ordered, or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), if necessary, whichever occurs later.

(7) The administrator is responsible for conducting a periodic review in this state or for requesting that another state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(8) Upon receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing. The notice must advise the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party(ies) if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage or cash medical support, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support or ordering appropriate health care coverage or cash medical support;

(c) That the administrator will not conduct a review until 30 days have passed since the date of the notice unless documentation or written information is received from the parties before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(9) The administrator will notify the parties in writing of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage or cash medical support.

(10) This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines and appropriate health care coverage or cash medical support is already ordered to be provided; or

(b) May be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(c) Must advise the parties that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has passed;

(d) Must include the request for hearing form for each of the parties if the administrator uses an administrative determination or motion form; and

(e) Must be sent to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.

(11) If the administrator determines that the support order should be modified and there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(12) If a party wishes to object to the proposed determination or modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(13) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator will:

(a) Review the case to determine whether the monetary child support or medical child support provisions, should be redetermined and, if so, notify the parties of the new presumed support amount or medical child support provisions;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved; and

(d) Send a copy of the proposed determination and hearing request to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.



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(14) If no request for hearing is filed within the 30 day period, the administrator will submit the determination or modification of the support order to the circuit court for entry in the court register.

(15) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, does not order appropriate health care coverage, or an amount towards cash medical support, the administrative law judge must enter a modified order that complies with the guidelines.

(16) An appeal under this rule will be as provided in ORS 25.287.

(17) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 11-2008(Temp), f. & cert. ef. 7-15-08 thru 9-30-08; DOJ 12-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09

## 137-055-6210

### Advance Payments of Child Support

(1) "Advance payment" means:

(a) The Department of Justice (DOJ) has transmitted money to an obligee or to a person or entity authorized to receive support payments;

(b) The amount does not exceed the total arrears available for assignment to the state;

(c)(A) DOJ has applied the money incorrectly through no fault or error of the payee; or

(B) The amount transmitted by DOJ is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(d) The payment is not the result of a dishonored check.

(2) If the obligor is deceased and without assets or an estate, the provisions of this rule do not apply, but the provisions of OAR 137-055-6220 apply.

(3) The person who receives an advance payment owes the amount of the advance payment to DOJ.

(4) Instead of directly collecting the amount of the advance payment from the person who received it, the amount will be removed from the arrears owed to the payee, temporarily-assigned arrears or conditionally-assigned arrears and will be assigned to the state as permanently-assigned arrears under OAR 137-055-6010. DOJ will notify the payee in writing of the:

(a) Amount to be collected as permanently-assigned arrears;

(b) Right to object and request an administrative review.

(5) When an objection is received, DOJ will conduct an administrative review and notify the payee in writing of the:

(a) Determination resulting from the review; and

(b) Right to challenge the determination by judicial review under ORS 183.484.

(6) Notwithstanding the provisions of section (4) of this rule, designation of permanently-assigned arrears to recover advance payments does not affect whether a case is assigned to DOJ as provided in OAR 137-055-2020 or a district attorney office as provided in 137-055-2040.

(7) For the purposes of this rule, a "dishonored check" is not one which has been paid or made negotiable.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09

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

**Rule Caption:** Provides criteria for proposed fire code amendment process, amend mid-cycle amendment.

**Adm. Order No.:** OSFM 10-2008

**Filed with Sec. of State:** 12-18-2008

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 7-1-2008

**Rules Adopted:** 837-040-0015

**Rules Amended:** 837-040-0001, 837-040-0020

**Subject:** Removes duplication with Oregon Fire Code.

Defines and outlines criteria to submit proposed fire code amendments to the Office of State Fire Marshal.

Amending a mid-cycle amendment to NFPA 10 Standard.

**Rules Coordinator:** Pat Carroll—(503) 373-1540, ext. 276

## 837-040-0001

### Scope

(1) The **International Fire Code** and the Oregon amendments represent a total scope of regulation.

(2) None of the individual chapters in the International Fire Code and Oregon amendments are stand alone requirements. (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09

## 837-040-0015

### Proposed Code Amendment Criteria

(1) All proposed code amendments are submitted to the Office of State Fire Marshal in writing or on an agency approved form.

(2) All proposed code amendments must provide justification and the particular circumstances requiring the amendment.

(3) The Office of State Fire Marshal screens proposed code amendments to determine whether they substantially meet the requirements of OAR 837-040-0015(5). Proposed code amendments not substantially meeting the requirements of OAR 837-040-0015(5) may be returned to the applicant with specific reasons included in the returned application.

(4) Proposed Code amendments that substantially meet the requirements of OAR 837-040-0015(5) will be reviewed by a fire code advisory committee. Final approval or denial of the proposed code amendment will be at the discretion of the State Fire Marshal.

(5) As required by OAR 837-040-0015(2), a proposed code amendment must address, where applicable, whether or not the proposed code amendment:

(a) Is necessary to correct any unforeseen or probable outcomes resulting from the application of a code section, and if so, why;

(b) Is needed to protect the health, safety, welfare, comfort and security of occupants, emergency responders, and the public, and if so, why;

(c) Corrects inadequate application by a code section to a method, material or design, and if so, how;

(d) Is necessary to address unique geographic or climatic conditions within Oregon, and if so, why;

(e) Is needed to eliminate conflicting, obsolete, or duplicative code provisions or standards between Oregon adopted codes, statutes or regulations, and if so, why;

(f) Provides for the use of unique or emerging technologies, or promote advances in construction methods, devices, materials and techniques, and if so, how;

(g) Any adverse fiscal impact or cost savings passed on to the general public, the construction industry, local and state governments, and small businesses. If applicable, an interested person must describe the added or reduced cost of a proposed code amendment, describe the adverse fiscal impact or cost savings in relation to the current Oregon Fire Code and include any standards of measure used to arrive at the result given.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09

## 837-040-0020

### Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal may amend the **Oregon Fire Code** approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

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(2) Any time between publications of the international Fire Code, the Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumstanced merit

(Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications).

(3) Effective October 1, 2008 the 2007 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Amend Section 102.3 by replacing the words Fire Code Official with Building Code Official.

(b) Amend Section 202, Definitions for Group I-4, Day Care Facilities and R-3 Residential Occupancies.

(c) Section 307.1.1. Delete wording that refers to, offensive or objectionable smoke or odor emissions, to eliminate a possible conflict with Oregon Department of Environmental Quality (ODEQ) rules.

(d) Amend Section 605.10 to delete references to heating elements and tip over switch in the Exception.

(e) Amend Section 902.1, Definitions for Substantial Alterations and Substantial Damage to correlate with changes to the **2007 Oregon Structural Specialty Code (OSSC)**.

(f) Delete Section 903.2.7.1 to correlate with changes to the 2007 Oregon Structural Specialty Code (OSSC).

(g) Amend and renumber Section 903.2.7.2 to correlate with the changes to the 2007 Oregon Structural Specialty Code (OSSC).

(h) Amend Section 1019.2 and Table 1019.2 to correlate with the changes to the 2007 Oregon Structural Specialty Code (OSSC).

(i) Add a new Section 1305 to correlate with the 2007 Oregon Mechanical Specialty Code (OMSC) for dust collection.

(j) Amend Appendix Section SR107.3 and SR 108.3.2 to correlate with the changes to the 2007 Oregon Structural Specialty Code (OSSC).

(k) Amend Chapter 45, National Fire Protection Association (NFPA) Standards, to current editions as follows:

NFPA 10 to the 2007 edition. Section 7.1.2.3 will be effective December 31, 2009.

NFPA 11 to the 2005 edition. NFPA 13, 13R and 13D to the 2007 edition. NFPA 14 to the 2007 edition. NFPA 40 to the 2007 edition. NFPA 58 to the 2008 edition. NFPA 72 to the 2007 edition. NFPA 101 to the 2006 edition. NFPA 409 to the 2004 edition.

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

Stat. Auth: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 6-2008, f. 9-2-08, cert. ef. 10-1-08; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09

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

**Rule Caption:** Define Criteria for Accruing Creditable Service Time.

**Adm. Order No.:** DPSST 22-2008

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 12-29-08

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 259-008-0060

**Subject:** Clarify current practices and policies regarding the circumstances under which a public safety professional does or does not accrue creditable service time for purposes of certification.

**Rules Coordinator:** Bonnie Salle-Narveaz—(503) 378-2431

#### 259-008-0060

##### Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunications meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and shall be acquired by all police officers, telecommunications, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers shall be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers shall meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunications must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T). [Form not included. See ED. NOTE.]

(7) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative shall sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision shall be specified in writing and shall accompany the Application for Certification (Form F7). [Form not included. See ED. NOTE.]

(8) When a department head is the applicant, the above recommendation shall be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records shall include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented may be accepted, subject to staff evaluation and approval. These records shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or its designated staff may award training points for correspondence courses.

(e) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(f) College credit awarded based on training completed may be applied toward either training points or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the total number of training hours for which college credit was awarded.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(s).

(C) Notwithstanding subsection (f) and (g) above, no credit can be applied toward both an education credit and training point when originating from the same training event.

(11) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certifi-

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cation is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will cease to accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on "leave." This includes, but is not limited to, medical leave, a leave of absence or military leave;

(C) Notwithstanding section (B) of this rule, a public safety professional may submit a written request for credit for military time served upon return from a military leave. The Department may approve credit for military time served if the public safety professional's military duties are determined to be equivalent to the duties the public safety professional was performing prior to the public safety professional's military leave. Any credit received for time served will be at the discretion of the Department.

(D) From the date a public safety professional's certification is recalled until it is reinstated by the Department;

(E) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional;

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator, emergency medical dispatcher as defined in OAR 259-008-0005(12) and (32) respectively, or part time parole and probation officer, as defined under 259-008-0005(20) and (21) and 259-008-0066, shall count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants shall have completed a period of service of not less than nine (9) months with one or more law enforcement units, or public or private safety agencies in a certifiable position, in the field in which certification is being requested.

(b) Applicants shall have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed not less than 45 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department

approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), as attested to by the applicant's department head during the time such duties were performed, for a period of one (1) year. The required experience shall have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed not less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed not less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer shall meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A person who is certified in one discipline may apply for multi-discipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant shall demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification, and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held



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requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For the EMD certificate; a minimum of four (4) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(B) For the Telecommunicator certification, a minimum of twelve (12) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(C) For all other disciplines, a minimum of twenty (20) hours of training, specific to each discipline in which certification is held, must be reported annually on a Form F-15M.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) Failure to comply with subsection (c) of this rule shall result in the recall of the multi-discipline certification by the Board.

(f) Upon documentation of compliance with subsection (c) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

[ED. NOTE: Forms & Tables referenced are available from the agency.]

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665  
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665  
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08

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**Rule Caption:** Amend minimum standards for polygraph examiner trainee license and amend fingerprint submittal requirement.

**Adm. Order No.:** DPSST 23-2008(Temp)

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 12-29-08 thru 5-30-09

**Notice Publication Date:**

**Rules Amended:** 259-020-0010

**Subject:** Amends minimum standards for polygraph examiner trainee license to allow for submittal of one fingerprint card, when required, and provides for additional time, beyond the current two year limitation, for a polygraph trainee to obtain a total of 200 examinations.

**Rules Coordinator:** Bonnie Salle-Narveaz—(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. [Form not included. See ED. NOTE.]

(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 or 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

# ADMINISTRATIVE RULES

Hist.: PS 12, f. & cert. ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & cert. 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 23-2008, f. & cert. ef. 12-29-08

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## Department of Revenue Chapter 150

**Rule Caption:** S corporation tax credits; estimated taxes; interest rates; withholding reports.

**Adm. Order No.:** REV 16-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 150-305.220(1), 150-305.220(2), 150-314.515(2), 150-314.752, 150-316.202(3)

**Subject:** 150-314.515(2), *Estimated Tax: Application of Payments*, is amended to clarify the date on which a corporation's payment of estimated tax is applied for purposes of computing an underpayment.

150-314.752, *Business Tax Credits Available to S corporation Shareholders*, is amended to add the Film Production Development Tax Credit to the list of business tax credits that may be claimed by shareholders of an S corporation and to update references to codified statutes.

150-305.220(1) *Interest on Deficiencies and Delinquencies*, is amended to reflect that the interest rate charged on deficiencies and delinquencies decreases from 9% to 6% for interest periods beginning on or after January 1, 2009.

150-305.220(2) *Interest on Refunds*, is amended to reflect that the interest rate paid on refunds decreases from 9% to 6% for interest periods beginning on or after January 1, 2009.

150-316.202(3), *Withholding: Annual Report by Employer*, is amended to provide that certain employers will be required to electronically file withholding reports directly with the Department of Revenue beginning in 2010.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

### 150-305.220(1)

#### Computation of Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2009, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of 0.5 percent per month (6 percent annually). For a fraction of a month, interest will be computed at 0.0164 percent per day. For historic interest rates, see section (4) of this rule.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100, 305.220

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04, cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-305.220(2)

#### Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2009, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of 0.5 percent per month (6 percent

annually). For a fraction of a month, interest will be computed at 0.0164 percent per day. For historic rates, see section (6) of this rule.

(2) Interest starting date.

(a) As provided in OAR 150-314.415, the interest starting date for refunds of individual income tax, corporate excise tax, or corporate income tax, is 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is latest.

(b) The interest starting date for refunds not described in (2)(a) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate paid on refunds will be the same as the interest rate charged on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100, 305.220

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04, cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-314.515(2)

#### Estimated Tax: Application of Payments

(1) When a corporation files its completed excise or income tax return and the tax shown due thereon is less than the amounts previously paid for that year, the corporation may make an irrevocable election to have the overpayment either refunded or applied on the following year's estimated tax. This election shall be made by entering the amount in the appropriate space provided on the corporation excise tax return or corporation income tax return. The overpayment shall be applied against the next year's estimated tax liability as of the date which is the later of the due date of the return (without regard to extensions) or the date the overpayment was made. In the case of a delinquent return, the overpayment is considered to have been made on the date the return was filed.

(2) When an election is made to have an overpayment resulting from the amendment of a prior year return applied on the following year's estimated tax, the overpayment shall be applied to the extent approved on review and as of the date the transfer is made.

**Example:** A corporation files an amended return for calendar year 2007 on October 15, 2008, claiming a \$500 overpayment and electing to have it applied to its 2008 estimated tax account. The 2007 amended return was received by the department on October 20, 2008. The refund was reduced to \$400 and approved on November 20, 2008. The actual transfer of the \$400 plus interest was made on December 1, 2008. The application date to the 2008 estimated tax account is December 1, 2008.

(3) All estimated tax payments received by the department shall be credited as of the date received. All estimated tax payments received by the department shall be applied to any prior underpayment and the remainder, if any, shall be applied to the next required installment.

**Example:** Corporation A is a calendar year taxpayer. A's return is filed timely on April 15, 2009. Its 2008 tax after credits is \$12,000. The corporation would have to make the following estimated tax payments on or before the indicated dates to avoid having an underpayment of estimated tax: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.515

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-314.752

#### Business Tax Credits Available to S Corporation Shareholders

The following credits may be claimed by shareholders of an S corporation filing individual returns, as provided in subsection (2) of ORS 314.752, but are not available to shareholders included in a composite return as provided in subsection (2)(b) of OAR 150-314.775:

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- (1) Voluntary removal of riparian land from farm production credit provided by ORS 315.113,
- (2) On-farm processing facilities credit provided by ORS 315.119,
- (3) Employee and dependent scholarship program payments provided by ORS 315.237,
- (4) First break program credit provided by ORS 315.259,
- (5) Individual development accounts credit provided by ORS 315.271,
- (6) Emission reducing production technology or process (pollution prevention) credit provided by ORS 315.311,
- (7) Long term care insurance credit provided by ORS 315.610,
- (8) Trust for cultural development account contributions credit provided by ORS 315.675,
- (9) Lending institution loans for affordable housing credit provided by ORS 317.097,
- (10) Energy conservation loans to residential fuel oil customers or wood heating residents credit provided by ORS 317.112,
- (11) Long term enterprise zone facilities credit provided by ORS 317.124,
- (12) Farmworker housing loans credit provided by ORS 317.147,
- (13) Contribution of computers or scientific equipment for research to educational organizations credit provided by ORS 317.151,
- (14) Qualified research activities credit provided by ORS 317.152,
- (15) Alternative qualified research activities credit provided by ORS 317.154,
- (16) University venture development fund contributions credit provided by ORS 315.521,
- (17) Water transit vessels credit provided by ORS 315.517, and
- (18) Film production development contributions credit provided by ORS 315.514.

Stat. Auth.: ORS 305.100 & 314.752

Stats. Implemented: ORS 314.752

Hist.: REV 2-2003, f. & cert. ef. 7-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-316.202(3)

### Withholding: Annual Report by Employer

- (1) Definitions.
  - (a) "Employer" has the meaning given that term in ORS 316.162.
  - (b) "Payroll service provider" is any person that prepares payroll tax returns on behalf of another person for remuneration.
- (2) Withholding Statements.
  - (a) Every employer must complete an individual withholding statement for each employee. The Oregon withholding statement must contain the same information as is required to be reported on a federal withholding statement including:
    - (A) Total state and local wages;
    - (B) State and local tax withheld during the calendar year; and
    - (C) The Oregon business identification number of the employer.
  - (b) The employer must use a federal withholding statement (Form W-2) for purposes of section (2) of this rule. If the employer is withholding from certain periodic payments as described in ORS 316.189, the employer must use federal Form 1099-R for purposes of section (2) of this rule.
  - (c) The employer must provide a copy of the withholding statement to the employee within thirty-one days of the close of the calendar year. If an employee is terminated and requests a copy of the withholding statement, the employer must provide the form to the employee within 30 days of either the request or the final wage payment, whichever is later.
  - (d) The information in the withholding statement (Form W2) must be filed electronically with the department as follows:
    - (A) If the employer has 250 or more employees, electronic filing of W2s is required beginning with calendar year 2009 information returns;
    - (B) If the employer has less than 250 employees and uses a payroll service provider, electronic filing of W2s is required beginning with calendar year 2009 information returns;
    - (C) If the employer does not use a payroll service provider and has:
      - (i) Less than 250 employees, electronic filing of W2s is required beginning with calendar year 2010 information returns.
      - (ii) Less than 50 employees, electronic filing of W2s is required beginning with calendar year 2011 information returns.
    - (e) Under ORS 314.385, the due date for electronic filing of W2s for Oregon purposes is the same as the federal due date for electronically filed W2s; March 31 following the close of the calendar year.
  - (3) Reconciliation Reports (Form WR).
    - (a) Every employer must file a summary of total compensation paid and Oregon tax withheld for each employee. This report must include a rec-

onciliation of tax remitted to the department by the employer for the calendar year to the total of tax withheld from employees' pay for the calendar year.

(b) If the reconciliation report is not filed within 30 days of the department's notice to the employer of a failure to file, a \$100 failure-to-file penalty applies.

(c) If there is a difference between the amount paid to the department by the employer and the amount withheld by the employer from the employees' wages, the employer must explain the difference on the report.

(d) The report due date is the same as the due date of the corresponding federal report. If the employer ceases doing business, the report is due within 30 days of termination of business.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.202

Hist.: 1-69 as 150-316.202(2); 11-73; 12-74; 12-19-75, Renumbered; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.202(2)-(B); RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09

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**Rule Caption:** Property tax exemptions, tax payments, farm, local budget and appeals programs.

**Adm. Order No.:** REV 17-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Adopted:** 150-307.455, 150-311.670(1), 150-311.706(1)

**Rules Amended:** 150-294.435(1)-(A), 150-307.140, 150-308A.056

**Rules Repealed:** 150-294.435(1)-(B), 150-308A.059

**Rules Ren. & Amend:** 150.309.067(1)(b) to 150-309.067(1), 150-309.110(1)-(E) to 150-309.110(A), 150-309.110(1)-(B) to 150-309.110

**Subject:** 150-307.455, *Oregon Food Processor Property Tax Exemption* is adopted to provide guidance in claiming an exemption from property tax for certain food processors. The rule explains the certification process, exemption application timeline, late filing fees, and general administration of this exemption. Additionally, the rule defines terms used in statute and the roles of the department and the Department of Agriculture in administering the exemption provisions. The rule is also needed to identify what constitutes a sufficient and timely filing for the Oregon food processors exemption claim, including calculation and payment of the late filing fee if not timely filed.

150-311.670(1) *Requirements for Property to be Entitled to Senior and Disabled Tax Deferral*, provides guidance to taxpayers on how to continue participating in the deferral program after they have left the homestead for reasons of health.

150-311.706(1) *Requirements for Property to be Entitled to Deferral of Special Assessments for Local Improvements*, provides guidance to taxpayers on how to continue participating in the deferral program after they have left the homestead for reason of health.

150-294.435(1)-(A), *Property Taxes Certified*, is amended to delete a reference to another rule that is proposed for repeal, 150-294.435(1)-(B).

150-307.140, *Minimum Review Required in Determining Exempt Status of Property*, is amended to reflect changes made by 2007 legislation (SB 653), which changed ORS 307.112 to also allow a qualified sublessee to file a claim for exemption. For example, a religious organization may now sublease property owned by a taxable owner, use it for its religious purposes, and file for the religious property tax exemption. To reflect these recent changes made to 307.112, this rule needs to include additional language to show that a religious organization may apply under ORS 307.112 if it is leasing or subleasing property from a taxable owner.

150-308A.056, *Farm Use Definitions, Inactivity Due to Illness and Description of Lands in Farm Use*, is amended to incorporate language from OAR 150-308.059. Two rules (OAR 150-308A.056 & 150-308A.059) currently are used to clarify the elements the assessor may use to determine whether land qualifies for farm use special assessment. The language in OAR 150-308A.059 is specific to lands in non-exclusive farm use zones, but the criteria need to apply to both



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land zoned for exclusive and non-exclusive farm use. For this reason, the language in OAR 150-308A.059 needs to be incorporated into OAR 150-308A.056 so the criteria address both types of farmland. Expands rule to give examples of lands that must be disqualified from farm use special assessment due to “non-farm use”.

150-309.067(1), *Nonoffice-holding Residents Appointed to Board of Property Tax Appeals (BOPTA) Pools*, is amended to add language stating that non-office holding residents appointed under ORS 309.067(1)(a) must meet the criteria of this rule. Modify section 3 to read “An elected official of the county”; Amends Sections (5) & (6) to clarify that people may not serve on the board if they worked in the assessor’s office during the assessment year or tax year that is subject to appeal to BOPTA.

150-309.110-(A), *Board of Property Tax Appeals (BOPTA) Procedures When Roll Changed After Petition is Filed*, explains Board of Property Tax Appeals procedures when a petition has been filed and the assessor subsequently reduces the value of the property. The assessor can reduce the value under ORS 308.242(2) (via stipulation) or under ORS 311.205 (for clerical error), but the rule currently only addresses changes made under ORS 308.242(2). The language of the rule is amended to expressly state that the board will hold a hearing in these situations.

150-309.110, *Department Review of Board Orders*, This rule explains the process used by the department to review Board of Property Tax Appeals (BOPTA) orders if the time which the board can correct the order has passed. Amend rule to align with criteria & procedures outlined in department’s supervisory rule OAR 150-306.115. Remove requirement of the department to issue a decision within 45 days.

150-294.435(1)-(B), *Local Option Levies and September Voter Approval*, is proposed for repeal as being redundant.

150-308A.059, *Description of Lands in Farm Use*, is proposed for repeal as material in the rule is incorporated into OAR 150-308A.056  
**Rules Coordinator:** Debra L. Buchanan — (503) 945-8653

### 150-294.435(1)-(A) Property Taxes Certified

(1) The total of all taxes proposed to be certified by a municipal corporation which is subject to Local Budget Law cannot exceed the amount or rate approved by the budget committee. The budget committee must approve the rate or the amount of each tax to be lawfully certified to the assessor. Any portion of the certified tax exceeding the rate or amount approved by the budget committee that was not included in a republished budget summary will not be extended by the assessor on the assessment roll except as provided in ORS 294.437.

(2) The budget committee of a municipal corporation which is subject to Local Budget Law that adopts a biennial budget must approve the total rate or amount of all taxes to be certified each year. Taxes must be certified in each year of the budget period. Any portion of the certified tax exceeding the rate or amount approved by the budget committee for either year of the budget period that was not included in a republished budget summary will not be extended by the assessor on the assessment roll except as provided in ORS 294.437.

(3) The budget document must include a complete detail of proposed expenditures requiring levy of property taxes.

Stat. Auth.: ORS 305.100, 294.495

Stats. Implemented: ORS 294.435

Hist.: 2-69; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-294.435; REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-307.140

#### Minimum Criteria Required in Determining Exempt Status of Property for Religious Organizations

(1) The following criteria, as a minimum, will be used in determining the qualification for property tax exemption of property of a religious organization under 307.140 when an application is made as required in ORS 307.162, 307.112 or 307.166:

(a) The applicant must be a religious organization.

(A) If the religious organization is the owner or purchaser of the property, application is made under ORS 307.162.

(B) If the religious organization is leasing, subleasing, or in a lease-purchase agreement for the property from a taxable owner, application is made under ORS 307.112.

(C) If the religious organization is leasing or subleasing the property from another exempt organization, application is made under ORS 307.166.

(b) The applicant must be the entity in possession of the property.

(c) The property for which a religious organization claims an exemption must be reasonably necessary to accomplish the religious objectives of that organization.

(d) The actual use of the property must be consistent with the claimed necessity.

(2) Only the portion of a property used for religious purposes shall be granted exemption from ad valorem taxation. Property may be in part taxable and exempt.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.140

Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 6-1986, f. & cert. ef. 12-31-86; REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-307.455

#### Oregon Food Processor Property Tax Exemption

PURPOSE: The Oregon Department of Revenue (DOR) and the Oregon Department of Agriculture (ODA) may adopt rules to implement the provisions of ORS 307.455 and 307.457. 307.455 defines the eligibility requirements for exempt food processing machinery and equipment (M&E). This rule is intended to ensure that both agencies interpret and apply ORS 307.455 and 307.457 in a consistent manner; to clarify the meaning of terms used in ORS 307.455; and to explain the process through which a food processor may receive the exemption provided by ORS 307.455.

(1) Definitions:

(a) “Assessor” means the county assessor, or DOR, if DOR is responsible for the appraisal of the facility under ORS 306.126.

(b) “Certified” means that ODA has inspected the qualified M&E and has provided written verification to the food processor that the M&E is eligible for exemption under ORS 307.455.

(c) “Newly acquired” means new or used M&E that is first purchased or leased by a food processor not more than two years (24 months) prior to placing it into service. Leased equipment may be exempt only if the food processor is responsible for the payment of the property taxes under the terms of the lease agreement. Newly acquired property does not include existing equipment that has been refurbished or reconditioned in the time frame provided by this rule.

(d) “Placed into service” means the date the M&E is first used or in such condition that it is readily available and operational for its intended commercial use. It does not include property that is being tested or is in the process of being erected or installed on the January 1 assessment date.

(e) “Qualified M&E” means property, whether new or used, that is newly acquired by a food processor and placed into service prior to January 1 preceding the first tax year for which an exemption under this section is sought, and that consists of:

(A) Real property M&E that is used by a food processor in the primary processing of raw or fresh fruit, vegetables, nuts, legumes, or seafood; or

(B) Personal property M&E that is used in an integrated processing line for the primary processing of raw or fresh fruit, vegetables, nuts, legumes, or seafood.

(f) “Real Market Value (RMV)” of the property, for the purpose of determining the late filing fee pursuant to ORS 307.455, means the invoice cost of the qualified M&E, installation, engineering, and all miscellaneous costs including machinery process piping, foundations, power wiring, interest during installation, and freight.

(2) A food processor seeking an exemption under ORS 307.455 must make a request to ODA for certification. The request must:

(a) Be made in writing on a form provided by ODA;

(b) Include a listing on the Oregon Food Processor Certification of Qualified Machinery and Equipment form provided by DOR of all qualified M&E for which certification is sought;

(c) Be made at any time after M&E becomes “qualified M&E” and

(d) Be postmarked by February 1 of the assessment year during which the exemption is claimed. If the request is made after February 1, ODA will not guarantee that certification will be completed prior to the March 1 exemption claim filing deadline.

(3) Upon receiving the request for certification, the Food and Safety Division of ODA will:

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- (a) Schedule a site visit with the food processor;
- (b) Inspect the M&E that is the subject of the listing submitted to ODA for which certification is sought;
- (c) Determine if the subject M&E constitutes qualified M&E; and
- (d) Provide written certification to the food processor approving or denying the subject M&E as qualified and eligible for exemption. The written certification is provided by ODA on the listing of qualified M&E submitted by the food processor.

(e) Denial of certification of certain property by the Oregon Department of Agriculture is a contested case for the purpose of ORS Chapter 183.

(4) Following the certification process, the food processor must file an exemption claim form with the assessor. The claim must:

(a) Be filed on a completed Oregon Food Processor Exemption Claim form provided by DOR;

(b) Include the written certification signed and dated by ODA; and

(c) Be filed by March 1, except as provided by section 9 of this rule.

(5) The filing of an exemption claim form is separate from the filing of a property tax return.

(6) Approved extensions for filing property tax returns do not apply to filing the exemption claim form.

(7) The assessor will return any exemption claim form not meeting the requirements of subsection 4(a) and (b) of this rule to the food processor.

(8) If the assessor returns an exemption claim form for completion, the food processor must return the exemption claim form to the assessor by March 1 for the claim to be considered as timely filed.

(9) An exemption claim form that is filed after March 1, and on or before December 31 of the assessment year during which the exemption is claimed, must be accompanied by a late filing fee pursuant to ORS 307.455(2)(b). If the late filing fee is not included with the claim form, no exemption will be allowed.

(a) The late filing fee is the greater of \$200 or one-tenth of one percent of RMV of the property that is the subject of the claim form.

(b) The certified listing required by subsection 4(b) of this rule that is included with a late filed exemption claim must show the RMV of each piece of qualified M&E. The RMV is reported on the certified listing form, as directed by that form's instructions.

(c) Denial of the exemption may be appealed to the Oregon Tax Court pursuant to 305.275.

(10) Upon the assessor's receipt of a completed exemption claim form, and late filing fee if applicable, the assessor will compare the certified listing of all qualified M&E with the schedule of real and personal property M&E included on the property tax return. The property tax return must clearly identify the M&E that has been certified as eligible for exemption by ODA.

(11) Eligible M&E is exempt for the first qualifying tax year and the following four tax years as long as it continues to qualify as of January 1 of each year.

(a) The food processor must notify the assessor if any of the exempt M&E becomes ineligible for the exemption. Property becomes ineligible when it no longer constitutes "qualified M&E" as defined in this rule.

(b) The assessor may require verification of the M&E's continued qualification for exemption.

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

Stat. Auth.: ORS 305.100, 307.459

Stats. Implemented: ORS 307.455

Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-308A.056

#### Farm Use Definitions, Inactivity Due to Illness, and Description of Lands in Farm Use

(1) This rule applies to land in both exclusive farm use zones and non-exclusive farm use zones that may qualify for special assessment under ORS 308A.062 or ORS 308A.068.

(2) Definitions:

(a) "Farm unit" means a farming enterprise which includes all parcels being farmed by a single operator, whether the operator owns or leases the farmland.

(b) "Farm use" is defined in ORS 308A.056 and applies to land both inside and outside exclusive farm use zones.

(c) "Illness" means sickness, disease, injury, or disorder of body or mind which prevent the farmer or immediate family member from performing necessary farm operations.

(d) For purposes of subsection (2)(c): "Immediate family member" means the farmer's spouse, children, or any person for whom the farmer has

a legal responsibility including, but not limited to, guardianship of a dependent parent or child.

(e) "Land" means land in its natural state, including any site developments (see ORS 307.010).

(A) "Land" includes all mines, minerals, quarries, dikes, banks, drainage tile, water rights, and the like. Since ORS 308A.056 relates only to land used for farming, any mineral reserves under the land continue to be assessed at real market value as defined by ORS 308.205. Minerals include oil and gas. Severed mineral interests, even though underlying zoned farmland, are assessed to the owner in accordance with ORS 308.115.

(B) For the purpose of assessment of land in farm use, "land" does not include buildings, structures, improvements (unless their contribution is an integral part of the income attributable to the land), machinery, equipment, land improvements for homesites, fixtures erected upon or affixed to the land itself, or land used for a non-farm residence or other non-farm purpose.

(f) "Wasteland" includes but is not limited to swamps, rock outcroppings, gullies, unusable overflow lands, and drainage ways.

(A) Wasteland does not include tillable lands left idle or uncultivated and non-tillable grazing lands left unused when the accepted farming practice is to utilize the land.

(B) Wasteland does include land described in paragraph (1)(f)(A), if the owner can show that it is uneconomical to utilize the land as part of the farm unit. Utilizing the land is uneconomical if the cost to raise crops or animals exceeds the value of the crops or animals. Examples in which it would not be economical to utilize the land include:

(i) An unfenced area of grazing land where the annualized cost of fencing would exceed the income derived from the land.

(ii) An area of a farm that was only profitable through irrigation that is now unused because the cost of electricity to operate the irrigation pumps increases expenses beyond the income that can be derived from that area of land.

(C) Wasteland caused by the taxpayer, owner, or person in control of the property is not entitled to special farm use assessment. Examples of taxpayer-created wasteland include "mined out" land where gravel, soil, or other minerals have been extracted, and mine tailing refuse areas.

(3)(a) The law seeks to give the benefits of ORS 308A.062 and 308A.068 to that farmland which is operated primarily for the purpose of obtaining a profit in money.

(b) The assessor must consider all requirements of ORS 308A.056 and be convinced that the land is used in a manner that is reasonably designed and intended to obtain a profit in money by accepted farming practices. If the primary purpose of the current use of the land is not to obtain a profit in money, the land is not farm use land. This primary purpose of the land must be ascertained from overt acts. All pertinent facts will be considered to determine if property qualifies as farm use land. Pertinent information may include:

(A) Present and past use of the land.

(B) If the farming operation is conducted by another for the owner, the provisions of the oral or written agreement including the term, area let, consideration, and provisions for termination.

(C) Participation in governmental or private agricultural programs or activities.

(D) Productivity of the land.

(E) Number of livestock or poultry (by type).

(F) Amount of last harvest of each crop.

(G) Gross income from crops, livestock, and livestock products.

(H) Uses of the land for other than farming operation.

(I) Ratio of farm or agricultural use as against other uses of the land.

(4)(a) Farm inactivity for one year or less due to illness of the farmer or an immediate family member does not disqualify the property from farm use special assessment or continuation of abatement.

(A) Proof of illness must be provided to the assessor by a written statement from a licensed medical practitioner. The statement must identify the nature of the illness, the onset of the illness, and the extent of its debilitating nature.

(B) The timing of the illness must prevent farming practices.

(b) For meeting the farm income requirements of ORS 308A.071 and 308A.119, the year of farm inactivity due to illness is not counted as one of the five years for income or abatement determination.

(5) Notwithstanding section (3), any part of a farm unit that is employed in or supports a non-farm use does not qualify for special assessment. Examples of non-farm use include, but are not limited to:

(a) Land under retail stores, except for farm stands offering agricultural products for sale as described in ORS 215.213 and 215.283.

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(b) Land under processing facilities, except as allowed by ORS 215.213 and 215.283.

(c) Land under areas used to encourage the use or enjoyment of agricultural products such as tasting rooms, banquet halls, public gathering areas, or public entertainment.

(d) Land under structures such as communication towers, and improvements that support the structures.

(e) Land under structures used for power generation or transmission such as wind turbines, substations, crane pads, and improvements that support the structures.

(f) Private roads not used primarily to support the farming operation such as those used to access structures listed in subsections (d) and (e).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.380 & 308A.056

Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.380-(C); REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-309.067(1)

### Nonoffice-holding Residents Appointed to Board of Property Tax Appeals (BOPTA) Pools

As used in ORS 309.020(5) and 309.067(1)(b), a nonoffice-holding resident is a county resident who is not:

(1) A member of the county governing body;

(2) A member of the governing body of any taxing district within the county;

(3) An elected official of the county;

(4) A person employed or hired by the county or any taxing district within the county;

(5) A former county assessor, or any appointee acting in the place of the assessor, that held the office or appointed position during the assessment or tax year subject to appeal to BOPTA; or

(6) A person previously employed in or hired by the office of the assessor during the assessment or tax year subject to appeal to BOPTA.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.067

Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94, Renumbered from 150-309.010(1)-(d); RD 9-1997, f. & cert. ef. 12-31-97; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; Renumbered from 150-309.067(1)(b), REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-309.110

### Department Review of Board Orders

(1) If the clerk of the board, assessor, or tax collector finds a clerical error in an order or believes the board lacked jurisdiction to take an action, and the time period during which the board can correct the order has passed, the clerk, assessor, or tax collector may file a request with the Department of Revenue to review the order as a question of fact of interest to the department, under the authority granted by ORS 306.115.

(a) The request must be in writing and include a copy of the hearing record and the board order.

(b) The department must mail a copy of the request to the petitioner or the petitioner's designated representative at the address shown on the board's order.

(2) The department will review the request, determine whether the board order contained a correctable error, and issue a decision.

(a) The department must mail a copy of the decision to the petitioner or the petitioner's designated representative, the clerk of the board of property tax appeals, the assessor, and the tax collector.

(b) If the department determines the board order did contain an error, the decision will include an order to direct the officer in charge of the roll to correct the roll.

(c) The department may correct board orders issued during the current tax year or the two tax years immediately preceding the current tax year.

(3) Decisions of the department may be appealed to the Magistrate Division of the Oregon Tax Court within 90 days of the date the decision is mailed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1996(Temp), f. 6-7-96, cert. ef. 7-1-96 thru 12-26-96; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; Repealed by RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-309.110(1)-(B), REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-309.110-(A)

### Board of Property Tax Appeals (BOPTA) Procedures When Assessment Roll Changed After Petition is Filed Under ORS 308.242(2)

(1) If the assessor reduces the value of property under ORS 308.242(2) after a petition has been filed with BOPTA the roll is certified,

but prior to January 1 of the tax year, the following procedures apply if a petition has been filed with BOPTA and no a stipulation has been is not filed with the board prior to the time the board convenes:

(a) The board will schedule a hearing and notify the petitioner of the time and place the board will meet to resolve the petition.

(b) If When the value requested in the petition is requesting a value higher than or equal to the adjusted value, the board must issue an order dismissing the petition.

(c) If When the value requested in the petition is requesting a value lower than the adjusted value, the board must review the adjusted value and issue an order sustaining or correcting the adjusted value.

(2) If the assessor reduces the value of property under ORS 311.205 after a petition has been filed with BOPTA, the board will act on the petition in the following manner:

(a) The board will schedule a hearing and notify the petitioner of the time and place the board will meet to resolve the petition.

(b) If the value requested in the petition is higher than or equal to the adjusted value, the board must issue an order dismissing the petition.

(c) If the value requested in the petition is lower than the adjusted value, the board must review the adjusted value and issue an order sustaining or correcting the adjusted value.

(3) Notwithstanding (1)(b) and (2)(b) of this rule, the board will issue an order to sustain or reduce the adjusted value if the petitioner amends the value requested pursuant to section (5) of OAR 150-309.100(3)-(B) prior to or during the board hearing.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-309.110(1)-(E), REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-311.670(1)

### Requirement for Property to be Entitled to Senior and Disabled Tax Deferral

(1) For property to qualify for tax deferral under ORS 311.666 to 311.701, the property must meet the homestead requirement.

(2) The individual or individuals must live at the homestead while the property taxes are being deferred.

(3) The only exception to section (2) above is if the individual or individuals are required to live away from the homestead by reason of health. By reason of health means to facilitate or obtain medical care or to provide basic life needs. Basic life needs include but are not limited to preparation of meals, personal hygiene, or daily care of oneself.

(4) If the department is notified or has reason to believe the individual in the deferral program is not living at the homestead for reasons of health, the department will require the individual to provide a letter from a medical provider stating the individual is unable to provide medical care or basic life needs for himself or herself.

(5) Neither the individual nor the medical provider is required to give a specific date in which the individual will return to the homestead.

(6) If the individual or individuals leave the homestead by reason of health, the Oregon Department of Revenue will continue paying the property taxes until one of the events under ORS 311.684 occurs.

**Example:** Jack has been a participant in the Senior Deferral program for five years.

During a snowstorm in February, Jack fell and broke a hip. Jack has been sent to a nursing home for physical therapy and rehabilitation. Josh, Jack's son, notified the department of the situation through a letter from Jack's doctor. The Oregon Department of Revenue will continue to pay the property taxes to the county through the deferral program.

(7) An individual who is away from the homestead by reason of health may rent or lease part of the homestead. This activity will not affect the payment of the property taxes by the department unless it causes the total household income to exceed the maximum income allowed for the year in question.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.670

Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-311.706(1)

### Requirement for Property to be Entitled to Deferral of Special Assessments for Local Improvements

(1) For property to qualify for the special assessment deferral under ORS 311.702 to 311.735, the property must meet the homestead requirement.

(2) The individual or individuals must live at the homestead while the special assessment is being deferred.

(3) The only exception to section (2) above is if the individual or individuals are required to live away from the homestead by reason of health. By reason of health means to facilitate or obtain medical care or to provide



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basic life needs. Basic life needs include, but are not limited to, preparation of meals, personal hygiene, or daily care of oneself.

(4) If the department is notified or has reason to believe the individual in the deferral program is not living at the homestead for reasons of health, the department will require the individual to provide a letter from a medical provider stating the individual is unable to provide medical care or basic life needs for themselves.

(5) Neither the individual nor the medical provider is required to give a specific date in which the individual will return to the homestead.

(6) If the individual or individuals leave the homestead by reason of health, the Oregon Department of Revenue will continue paying the special assessment payments until one of the events under ORS 311.716 occurs.

**Example:** Jim has been a participant in the Deferral of Special Assessments for Local Improvements program for five years. During a snowstorm in February, Jim fell and broke a hip. Jim has been sent to a nursing home for physical therapy and rehabilitation. Greg, Jim's son, notified the department of the situation through a letter from Jim's doctor. The Oregon Department of Revenue will continue to pay the special assessment payments to the assessing district through the deferral program.

(7) An individual who is away from the homestead by reason of health may rent or lease part of the homestead. This activity will not affect the payment of the special assessment taxes by the department unless it causes the total household income to exceed the maximum income allowed for the year in question.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.706

Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

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**Rule Caption:** Communications companies subject to central assessment.

**Adm. Order No.:** REV 18-2008

**Filed with Sec. of State:** 12-26-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Adopted:** 150-308.515(1)(h)

**Subject:** OAR 150-305.515(1)(h) is adopted to provide that "cable companies" and "internet service providers" are communication companies that are subject to central assessment under ORS 308.515.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

### 150-308.515(1)(h)

#### Communication Companies

(1) Companies engaged in communication business or service include cable companies and internet service provider companies.

(2) "Cable Companies" engage in a variety of communication activities, such as providing television programming, radio programming, high speed internet access, or telecommunications services.

(3) "Internet Service Providers" (ISPs), also referred to as Internet Access Providers (IAPs), provide internet access for a fee.

(4) Cable companies and ISPs provide communication services via radio frequency signals transmitted through fixed optical fibers, coaxial cables (used in the transmission of high frequency signals) or satellite. These services may be wired or wireless and are provided to customers via a network system of property that typically cover multiple counties, states or countries.

Stat. Auth.: ORS 305.100, 308.655

Stats. Implemented: ORS 308.515

Hist.: REV 18-2008, f. 12-26-08, cert. ef. 1-1-09

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**Rule Caption:** Military income tax exemptions; substantial understatement penalties; registered domestic partners; credit for other state's tax.

**Adm. Order No.:** REV 19-2008

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**Notice Publication Date:** 10-1-2008

**Rules Adopted:** 150-316.791

**Rules Amended:** 150-314.402(1), 150-314.402(4)(b), 150-316.007(B), 150-316.082(1)-(B), 150-316.127-(9)

**Subject:** 150-316.791, Compensation for Military Service Performed Away from Home Overnight, is adopted to define terms related to exemptions from income tax for certain members of the mili-

tary, including "Military service," "home of the taxpayer" and "away from home."

150-314.402(1), Substantial Understatement of Income, is amended to update references to the Internal Revenue Code.

150-314.402(4)(b), Computation of Penalty, is amended to update references to the Internal Revenue Code and to clarify the calculation of the penalty for substantial understatement of income.

150-316.007-(B), Imputed Income for Domestic Partners, is amended to conform to enactment of the Oregon Family Fairness Act and to provide guidance to tax benefits available to Registered Domestic Partners.

150-316.082(1)-(B), Credit for Taxes Paid to Another State When Paid by a Pass-Through Entity, is amended to clarify the when a deduction for state income taxes must be restored to income on the Oregon income tax return.

150-316.127-(9), Gross Income of Nonresidents; Retirement Income Derived from Oregon Sources, is amended to add to the list of retirement plans that are considered qualified for purposes of exempting distributions from Oregon income tax.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

### 150-314.402(1)

#### Computation of Penalty for Substantial Understatement of Taxable Income (SUI)

(1) The department will assess a penalty if a substantial understatement of taxable income exists for any taxable year. The penalty is equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income. A substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.

(2) Substantial Understatement. An understatement is substantial if the understatement exceeds \$25,000 for corporations (other than S corporations or personal holding companies) or exceeds \$15,000 for all other taxable entities. [Example not included. See ED. NOTE.]

(3) Understatement Computation.

(a) The understatement is the taxable income required to be shown on the return minus the taxable income shown on the return.

(b) Taxable income required to be shown is the amount of taxable income determined for the taxable year without regard to:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(c) Taxable income shown is the amount determined from items properly reported on the return and:

(A) Items with substantial authority (as described in OAR 150-314.402(4)(b)) had such items received the proper tax treatment; and

(B) Items with adequate disclosure and reasonable basis (as described in OAR 150-314.402(4)(b)) had such items received the proper tax treatment.

(d) Items not included in the computation for taxable income shown are:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(C) Items without substantial authority or adequate disclosure and reasonable basis as described in OAR 150-314.402(4)(b).

(D) Items attributable to an abusive tax shelter as defined in ORS 314.402(4)(a).

(4) Penalty Computation.

(a) The penalty is equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income. The underpayment of tax attributable to the understatement is computed by applying an allocation percentage to the total underpayment of tax. The percentage to apply is computed by dividing the understatement of taxable income by total adjustments made. The total underpayment of tax is the tax required to be shown on the return minus the tax shown on the return for the taxable year.

(b) Tax required to be shown is the net tax computed on the taxable income required to be shown, as determined in subsection (3)(b) of this rule, without regard to:

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(A) Withholdings and payments of tax or estimated tax by the taxpayer; or

(B) The state surplus refund pursuant to ORS 291.349.

(c) Tax shown on the return is the amount of net tax determined for the taxable year before the taxpayer was first notified by the department concerning their tax liability. If the return shows no net income tax, the amount of tax shown on the return is considered to be zero. In all cases, tax shown is computed without regard to:

(A) Withholdings and payments of tax or estimated tax by the taxpayer; or

(B) The state surplus refund pursuant to ORS 291.349.

(5) A net operating loss carryover, tax credit carryover, or capital loss carryover shall be treated for the purposes of ORS 314.402 as a credit or deduction in the year in which the carryover is taken into account.

(6) The department will not impose a penalty under ORS 314.402 unless a return has been filed. [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.402

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-314.402(4)(b)

### Substantial Authority, Adequate Disclosure and Reasonable Basis

(1) Definitions. For purposes of ORS 314.402, OAR 150-314.402(1), and this rule:

(a) "Substantial authority" has the same meaning as used in Treasury Regulation 1.6662-4(d).

(b) "Adequate disclosure" has the same meaning as used in Treasury Regulation 1.6662-4(e)-(f).

(c) "Reasonable basis" has the same meaning as used in Treasury Regulation 1.6662-3(b)(3).

(2) When determining if an understatement is substantial, the understatement does not include items for which:

(a) Substantial authority exists (or existed at the time the taxpayer claimed it on the return) for the tax treatment of the item in question; or

(b) The taxpayer adequately disclosed relevant facts for the tax treatment of the item in question on the Oregon return (or on a statement attached to the Oregon return), and the taxpayer had a reasonable basis for the tax treatment of the item.

(3) Items not adequately disclosed to the department before the taxpayer was first notified by the department concerning the tax liability will not be considered adequately disclosed on any subsequent filing by the taxpayer.

(4) Items attributable to an abusive tax shelter as defined in ORS 314.402(4)(a) do not qualify under this rule to be excluded from the understatement.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.402

Hist.: RD 4-1988, f. 5-25-88, cert. ef. 6-1-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-316.007-(B)

### Policy — Application of Various Provisions of Tax Law to Domestic Partners

(1) Definitions.

(a) As used in this rule, "fringe benefits" means employee benefits provided to an employee's domestic partner that are tax exempt when provided to an employee's spouse. Fringe benefits typically include, but are not limited to:

(A) Health insurance;

(B) Tuition payments; and

(C) Tuition reduction programs.

(b) As used in this rule, "imputed value" means the amount included in federal taxable income of the employee because the fringe benefits are provided to the domestic partner rather than a spouse.

(2) Policy after effective date of the Oregon Family Fairness Act. The imputed value of certain fringe benefits provided by an employer on or after February 1, 2008 to an employee's domestic partner are exempt from Oregon income tax if those benefits are exempt from federal income tax for married individuals.

(3) As used in section (2) of this rule, "domestic partner" means a "partner" as that term is defined in Section 3(2) of 2007 Oregon Laws, chapter 99. The Act defines "partner" to be "an individual joined in a domestic partnership" and "domestic partnership" is defined as "a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon."

(4) Sections (5)–(7) of this rule are effective for benefits provided on or after January 1, 2000 through January 31, 2008.

(5) Policy from January 1, 2000 through January 31, 2008. The imputed value of certain fringe benefits provided by an employer to an employee's domestic partner are exempt from state income tax.

(6) As used in section (5) of this rule, "domestic partner" means a person in a relationship with an employee, each of whom:

(a) Is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) Is committed to the care and support of the other person;

(d) Is responsible for the needs of the other person;

(e) Is responsible for financial obligations to others equivalent to such financial obligations that arise within a marriage recognized under Oregon law; and

(f) Is not married and has no similar commitment and responsibility relative to any other individual.

[Publications: Publications referenced are available from the Department of Revenue pursuant to ORS 183.360(2) & 183.355(6).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.007 & 2007 OL Ch. 99

Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 9-2000, f. 8-15-00, cert. ef. 9-1-00; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 1-2009, f. & cert. ef. 1-5-09; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-316.082(1)-(B)

### Credit for Taxes Paid to Another State When Paid by a Pass-Through Entity

(1) An individual who owns an interest in a pass-through entity may claim a credit for tax paid to another state by the entity if:

(a) The individual is an Oregon resident;

(b) The portion of the tax for which credit is claimed is computed upon the proportionate share of the entity's income which is taxable to the individual under ORS 316.048; and

(c) An addition is made on the individual's Oregon return for the individual's share of any tax paid or accrued, that relates to the credit taken, and that is deducted on the entity's or individual's federal income tax return in determining federal taxable income.

(2) The individual must attach a statement to the Oregon return on which the credit is claimed showing:

(a) The amount(s) of mutually taxed income, tax paid, and credit claimed for each state; and

(b) The tax year(s) the taxes were due and the date(s) the entity paid the taxes for those states.

(3) The individual must compute the amount of the credit under the provisions of OAR 150-316.082(2).

(4) "Pass-through entity" means a corporation, partnership, or limited liability company that is characterized for Oregon excise and income tax purposes as an S corporation or as a partnership.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.082

Hist.: 10-5-87, 12-31-87, Renumbered from 150-316.082(1); 12-31-93; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 5-2000, f. & cert. ef. 8-3-00; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

## 150-316.127-(9)

### Gross Income of Nonresidents; Retirement Income Derived from Oregon Sources

(1) Federal law (PL 104-95) prohibits states from taxing retirement income received after December 31, 1995, by individuals who are not residents of this state or who are not domiciled in this state.

(a) Individuals who have Oregon as their domicile are taxed on all their retirement income, unless they meet the requirements to be taxed as nonresidents, as provided in ORS 316.027(1)(a)(A).

(b) Under Oregon law, Oregon source retirement income received after December 31, 1995, and before January 1, 2000, is exempt from tax if the person receiving the income is taxed as a nonresident under ORS 316.027(1)(a)(A), regardless of where the person's domicile is located.

(c) Beginning January 1, 2000, Oregon source retirement income is taxable if received by a person who is taxed as a nonresident but who is domiciled in Oregon. See OAR 150-316.127-(B) for information on calculating the amount of the Oregon source retirement income that is subject to tax.

Example 1: Sam lived and worked in Oregon until his retirement in 1997. At retirement he gave up his Oregon domicile and moved to Arizona.

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Following Sam's change of domicile to Arizona, none of Sam's pension income is taxable by Oregon.

Example 2: Douglas has lived and worked in Oregon all his life. On January 1, 1999, he retired, sold his personal residence, and took a temporary job working in Alaska. He plans to work for several years and then return to Oregon to live. He has not established a new domicile outside of Oregon, nor does he intend to give up his Oregon domicile. Douglas meets the requirements to be taxed as a nonresident under ORS 316.027(1)(a)(A). However, beginning January 1, 2000, his Oregon source pension will be taxable by Oregon because he has retained Oregon as his domicile. Douglas will follow the provisions of OAR 150-316.127-(B) to determine the amount taxable to Oregon.

### (2) Definitions.

(a) "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile. It continues as the domicile until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections.

(b) "Retirement income" has the same meaning as in 4 USC 114 and means income from:

(A) Qualifying employer pension and profit sharing plans exempt from tax under Internal Revenue Code (IRC) Section 401(a), such as corporate retirement plans and "Keogh" plans;

(B) Annuity plans (IRC 403(a) and IRC 403(b));

(C) Cash or deferred compensation arrangements (IRC 401(k) plans and 457 plans);

(D) Simplified employee pension plans ("SEPs") under IRC 408(k);

(E) Individual retirement arrangements ("IRAs") and Roth IRAs under IRC 408(a), 408(b), and 408A;

(F) Plans established and maintained by federal, state or local government for the benefit of employees (IRC 414(d));

(G) Any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of Title 10 of the United States Code;

(H) Trusts, as described in IRC 501(c)(18), that were created before June 25, 1959, that meet the specific requirements of that IRC section;

(I) Simple retirement account under IRC 408(p);

(J) Payments received from nonqualified deferred compensation plans (as described in IRC 3121(v)(2)(C)) if the payments:

(i) Are part of a series of substantially equal periodic payments that are made for the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or for a period of at least 10 years; or

(ii) Are received after termination of employment and are paid under a plan, program, or arrangement maintained solely for the purpose of providing retirement benefits that exceed the amounts allowed under the qualified retirement plans described in paragraph 1 of this rule.

(c) Retirement income does not include income received from stock options, restructured stock plans, severance plans, or unemployment benefits.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.127

Hist.: REV 5-2000, f. & cert. ef. 8-3-00; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

### 150-316.791

#### Compensation for Military Service Performed Away from Home Overnight

For purposes of ORS 316.791 and this rule:

(1) "Military service" means service:

(a) While on "active duty" under 10 USC §101(d)(1); or

(b) While on full-time National Guard duty under 32 USC §101(19);

or

(c) While on "active state duty" as defined in ORS 398.002(2).

(2) For the reader's convenience, the following United States Code (USC) references are provided:

(a) "Active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty. (10 USC §101(d)(1))

(b) "Full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member

is entitled to pay from the United States or for which the member has waived pay from the United States. (10 USC §101(d); 32 USC §101(19))

(3) "Home of the taxpayer" is where the taxpayer does any of the following:

(a) Maintains his or her primary residence;

(b) Lives with his or her family; or

(c) Incurs continuing living expenses, such as mortgage or rent, utilities, and real and personal property taxes and insurance.

(4) The taxpayer is "away from home" when the taxpayer is required to stay in a temporary location that is not a home of the taxpayer, such as a tent, military housing, or lodging, and is not allowed to go home while at the temporary location.

(5) "Three consecutive weeks" is 21 consecutive calendar days.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.791

Hist.: REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

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**Rule Caption:** Registered Domestic Partners.

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

**Filed with Sec. of State:** 1-5-2009

**Certified to be Effective:** 1-5-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 150-316.007-(B)

**Subject:** 150-316.007-(B), Imputed Income for Domestic Partners, is amended to conform to enactment of the Oregon Family Fairness Act and to provide guidance to tax benefits available to Registered Domestic Partners.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

### 150-316.007-(B)

#### Policy — Application of Various Provisions of Tax Law to Domestic Partners

(1) Definitions.

(a) As used in this rule, "fringe benefits" means employee benefits provided to an employee's domestic partner that are tax exempt when provided to an employee's spouse. Fringe benefits typically include, but are not limited to:

(A) Health insurance;

(B) Tuition payments; and

(C) Tuition reduction programs.

(b) As used in this rule, "imputed value" means the amount included in federal taxable income of the employee because the fringe benefits are provided to the domestic partner rather than a spouse.

(c) As used in section (2) of this rule, "domestic partner" means a "partner" as that term is defined in Section 3(2) of 2007 Oregon Laws, chapter 99. The Act defines "partner" to be "an individual joined in a domestic partnership" and "domestic partnership" is defined as "a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon."

(2) Policy after effective date of the Oregon Family Fairness Act (2007 Oregon Laws, chapter 99). The imputed value of certain fringe benefits provided by an employer on or after February 1, 2008 to an employee's domestic partner is exempt from Oregon income tax if those benefits are exempt from federal income tax for married individuals.

(3) Sections (4)–(5) of this rule are effective for benefits provided on or after January 1, 2000 through January 31, 2008.

(4) Policy from January 1, 2000 through January 31, 2008. The imputed value of certain fringe benefits provided by an employer to an employee's domestic partner are exempt from state income tax.

(5) As used in section (4) of this rule, "domestic partner" means a person in a relationship with an employee, each of whom:

(a) Is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) Is committed to the care and support of the other person;

(d) Is responsible for the needs of the other person;

(e) Is responsible for financial obligations to others equivalent to such financial obligations that arise within a marriage recognized under Oregon law; and

(f) Is not married and has no similar commitment and responsibility relative to any other individual.



# ADMINISTRATIVE RULES

[Publications: Publications referenced are available from the Department of Revenue pursuant to ORS 183.360(2) & 183.355(6).]  
Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 316.007 & 2007 OL Ch. 99  
Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 9-2000, f. 8-15-00, cert. ef. 9-1-00; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 1-2009, f. & cert. ef. 1-5-09

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## Land Conservation and Development Department Chapter 660

**Rule Caption:** Amendment of LCDC rule to clarify review process for wind projects on farmland.

**Adm. Order No.:** LCDD 5-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-2-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 660-033-0120, 660-033-0130

**Subject:** The proposed amendments to OAR division 33 will clarify the current review process for commercial power generating facilities on farmland by creating a separate category for wind power generation projects at 660-033-0130. The amendments will identify applicable farmlands, set forth a review process and threshold for review, and establish review standards.

**Rules Coordinator:** Bryan Cruz Gonzalez—(503) 373-0050, ext. 322

### 660-033-0120

#### Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use may be allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(2) R — Use may be approved, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(3) \* — Use not permitted.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09

### 660-033-0130

#### Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

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(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS Chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm

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dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designee considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3)–(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designee under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumb-

ing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(u) or 215.283(1)(t). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under 468B.095, and with the requirements of 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Such uses may be established, subject to the adoption of the governing body or its designee of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must



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be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.

(18) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of

cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65.

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and live-

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stock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a non-residential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite

## ADMINISTRATIVE RULES

sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting

from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same propo-

posal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 215.213

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09

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### Office of Private Health Partnerships Chapter 442

**Rule Caption:** Provides agency authority to perform criminal background checks for employees, prospective employees and others.

**Adm. Order No.:** OPHP 4-2008

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 442-001-0050, 442-001-0060, 442-001-0070, 442-001-0080, 442-001-0090, 442-001-0100, 442-001-0110, 442-001-0120, 442-001-0130, 442-001-0140, 442-001-0150, 442-001-0160



# ADMINISTRATIVE RULES

**Rules Amended:** 442-001-0000, 442-001-0005

**Rules Repealed:** 442-001-0010, 442-001-0015

**Subject:** Implements authority given by HB 2252 to perform criminal background checks on current and/or future employees, contractors, volunteers, and vendors. Also, cleans up language for readability and understandability by applying plain language guidelines.

**Rules Coordinator:** Cindy Bowman — (503) 378-4674

## 442-001-0000

### Notice

The Office of Private Health Partnerships will give notice before adoption, amendment or repeal of any permanent rule:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days before the hearing or intended action's effective date;

(2) By mailing copies of the notice to people on the mailing list and publications and organizations listed in policy, at least thirty (30) days prior to the rule's effective date; and

(3) By mailing a notice copy to the legislators specified in ORS 183.335(15) at least 49 days before the rule's effective date.

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 183

Hist.: IP 2-1989(Temp), f. 1-13-89, cert. ef. 1-18-89; IP 4-1989, f. & cert. ef. 9-29-89; IPGB 1-2004, f. & cert. ef. 11-1-04; OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0005

### Model Rules of Procedure

In agreement with the provisions of ORS 183.341, OPHP adopts the entire Attorney General's Model Rules of Procedure under the Administrative Procedures Act effective January 1, 2008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Office of the Attorney General or the Insurance Pool Governing Board.]

Stat. Auth.: ORS 183, 653.735 & 653.835

Stats. Implemented: ORS 183

Hist.: IP 1-1989, f. & cert. ef. 1-13-89; IPGB 1-1998, f. 2-18-98, cert. ef. 3-1-98; IPGB 1-2004, f. & cert. ef. 11-1-04; OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0050

### Statement of Purpose and Statutory Authority

OARs 442-001-0050 through 442-001-0160 are adopted to carry out ORS 735.711 Criminal Records Checks (CRC), for the purpose of checking criminal history in Oregon or anywhere in the United States under 181.534.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0060

### Definitions

(1) "Criminal Records Check (CRC)" means one of the following three processes used to check a subject individual's criminal history:

(a) Law Enforcement Data Systems (LEDS) uses names to check criminal offender information using the rules and procedures created by the Oregon Department of State Police (ODSP);

(b) An Oregon Criminal Records Check uses fingerprint identification to check criminal offender information in Oregon. Fingerprinting is done by ODSP; or

(c) A Nationwide Criminal Records Check uses fingerprint identification to check records for national criminal offender information. The Oregon Department of State Police does the fingerprinting. The Federal Bureau of Investigation does the search.

(2) "Fitness Determination" is the process used to find out if a subject individual is or is not fit to be an Office employee, volunteer, contractor, or vendor as described in OAR 442-001-0070.

(3) "Office" is the Office of Private Health Partnerships or any program within the agency.

(4) "Subject Individual" is described in OAR 442-001-0070.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0070

### Subject Individual

A subject individual is a person who:

(1) Works or is applying to work for the Office;

(2) Provides a service to the Office as a:

(a) Volunteer;

(b) Contractor; or

(c) Vendor; or

(3) Has or will have access to confidential information based on state or federal laws or rules as described in the OPHP Internal Operating Policy "Criminal Records Check."

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0080

### Criminal Records Check Required

The Office may perform, or request ODSP to perform a CRC when:

(1) A person meets the definition of subject individual as described in OAR 442-001-0070; or

(2) It is required by federal law, state or administrative rule, or by contract or written agreement with the Office.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0090

### Criminal Records Check Process

The written CRC process, along with the Internal Operating Policy, can be found in the Agency Resources section of the Office's Procedure Manual.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0100

### Potentially Disqualifying Crimes

(1) A guilty verdict may disqualify a subject individual from being hired or promoted within the Office or being allowed to provide services to the Office as a volunteer, contractor or vendor.

(2) Crimes Relevant to a Fitness Determination include:

(a) All felonies;

(b) All misdemeanors; and

(c) Any Federal crime, United States Military crime or international crime.

(3) Assigned Office staff will review each crime identified in a CRC based on:

(a) Oregon law;

(b) Federal law; or

(c) The laws of any other area that are valid and in effect at the time of the fitness determination.

(4) At no time will a subject individual be denied under these rules because of a juvenile record that has been sealed or deleted in agreement with ORS 419A.260 and 419A.262.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0110

### Final Fitness Determination

(1) If the Office decides to conduct a CRC, three factors will be considered in making a final fitness determination:

(a) Information given to the Office by the subject individual;

(b) Information received as a result of the CRC; and

(c) Any false statements made by the subject individual and found during the fitness determination process.

(2) When considering these factors, the Office may ask for other information from the subject individual or any other source inside or outside Oregon, including:

(a) Law enforcement;

(b) Criminal justice agencies; or

(c) Courts.

(3) To get other criminal offender information from the subject individual, the Office may request:

(a) To meet with the person;

(b) Written materials from the person; or

(c) Authorization from the person to get related information from other sources.

(4) If requested, the subject individual must meet with or provide the requested information to the Office within a reasonable period of time as determined by the Office. The Office will use this information to:

(a) Consider special circumstances about the nature of a crime. Special circumstances are defined in the OPHP Internal Operating Policy "Criminal Records Check."

(b) Evaluate any crime. During this review the Office will consider:

(A) The nature of the crime;

# ADMINISTRATIVE RULES

(B) Facts that support the conviction or pending charge or possible false statement; and

(C) If there is one, the connection of the crime or false statement to the specific requirements of the subject individual's current or future job, services, or general employment.

(c) Consider other facts related to the subject individual's job or services' responsibilities. "Other facts" are defined in the OPHP Internal Operating Policy, "Criminal Records Check".

(5) If a subject individual refuses to consent to a CRC, including fingerprint identification, the Office will not:

(a) Promote;

(b) Hire; or

(c) Allow the person the right to provide services. The person may not appeal this decision if it was made based on a refusal to consent to the CRC.

(6) If a subject individual is determined unfit, the Office will not:

(a) Hire;

(b) Promote; or

(c) Allow the person to provide services as a:

(A) Volunteer;

(B) Contractor; or

(C) Vendor in a position described in the OPHP Internal Operating Policy "Criminal Records Check."

(7) A completed fitness determination is a final order of the Office unless the subject individual requests:

(a) A contested case hearing as provided by OAR 442-001-0130(2); or

(b) An alternative appeals process as provided by OAR 442-001-0130(8).

(8) The Office will inform the subject individual determined unfit because of a CRC, of its decision, by:

(a) Personal service; or

(b) Registered or certified mail to the most current address provided by the subject individual.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0120

### Incomplete Fitness Determination

(1) The department will consider a fitness determination incomplete and close it when:

(a) Circumstances change and a person no longer meets the definition of a "subject individual" under OAR 442-001-0070;

(b) The subject individual does not provide materials or information described in agency policy and procedure under OAR 442-001-0090 within the rule time frames;

(c) The department cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with the department's attempts to acquire other relevant information described in agency policy and procedure under OAR 442-001-0090;

(e) The department determines that the subject individual is ineligible or unqualified for the position for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to challenge a fitness determination closing because it's incomplete using:

(a) A contested case hearing under OAR 442-001-0130(2); or

(b) An alternate appeals process under OAR 442-001-0130(8).

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0130

### Contesting a Fitness Determination

The contested case hearing process describing how a subject individual may appeal a fitness determination made under OAR 442-007-0110 is outlined in agency policy and procedure.

(1) The Attorney General's Model Rules of Procedure, OAR 137-003-0001 through 137-003-0092, apply unless the Office refers the matter to the Office of Administrative Hearings to assign an Administrative Law Judge. If the Office refers the matter to the Office of Administrative Hearings, 137-003-0501 through 137-003-0700 will apply.

(2) A subject individual who is currently an Office employee and is denied as unfit because of a final fitness determination may appeal the fitness determination either:

(a) Under this rule's contested case process; or

(b) Through applicable personnel rules and policy processes.

(3) A subject individual's decision to appeal a fitness determination using applicable personnel rules and policies waives the right to a contested case hearing.

(4) The only decision that may be made is whether or not the subject individual is fit or unfit. The office will not be required to place a subject individual in any position, nor accept services from or enter into a contractual agreement with a subject individual under any circumstance.

(5) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by:

(a) The Oregon Department of State Police;

(b) The Federal Bureau of Investigation; or

(c) Agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(6) A subject individual may use any process made available by the agency providing the information to challenge the accuracy or completeness of information identified in this section.

(7) The Office's hiring process or employment decisions will not be delayed by:

(a) Appealing a fitness determination;

(b) Challenging criminal offender information with the agency providing the information; or

(c) Requesting a new criminal records check and re-evaluation of the original fitness determination.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0140

### Agency Representation

(1) The Administrator may designate an agency manager or employee to appear on behalf of the Office in contested case hearings conducted based on these rules.

(2) Office managers, employees, or other authorized personnel may not present legal argument as defined under OAR 137-003-0008 on behalf of the Office in contested case hearings that are conducted based on these rules.

(3) When the Office decides it is necessary to consult with the Attorney General's office, the hearings officer will provide a reasonable period of time for an agency representative to do so in order to obtain either written or oral legal argument or advice, if needed.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0150

### Record Keeping, Confidentiality

(1) Any information obtained in the criminal records check is confidential.

(2) The Office must restrict giving out information obtained in the criminal records check. Only people identified by the agency, with a valid need to know the information, may have access to criminal records check documents.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

## 442-001-0160

### Fees

The agency may charge a fee for getting criminal offender information used in making a fitness determination.

(1) The fee will not exceed the fee(s) charged the department by the Oregon Department of State Police and the Federal Bureau of Investigation to get criminal offender information on the subject individual.

(2) The agency may charge the subject individual the fee; or

(3) If the subject individual is an employee of an Office contractor and is undergoing a fitness determination in that capacity, the agency may charge the subject individual's employer for the fee.

Stat. Auth. ORS 735.707

Stats. Implemented: ORS 735.700 - 735.714

Hist.: OPHP 4-2008, f. 12-31-08, cert. ef. 1-1-09

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## Oregon Criminal Justice Commission Chapter 213

**Rule Caption:** Amends Oregon sentencing guidelines in light of SB 1087 (2008) and Ballot Measure 57 (2008).

# ADMINISTRATIVE RULES

**Adm. Order No.:** CJC 2-2008(Temp)

**Filed with Sec. of State:** 12-31-2008

**Certified to be Effective:** 1-1-09 thru 6-29-09

**Notice Publication Date:**

**Rules Amended:** 213-017-0006

**Subject:** The Oregon Legislature passed SB 1087 on February 22, 2008. The legislature referred SB 1087 to a vote of the people at the general election of November 4, 2008 through Ballot Measure 57. Ballot Measure 57 was passed by a majority of the voters at the general election.

Section 10 of SB 1087 changed the crime of Mail Theft or Receipt of Stolen Mail under ORS 164.162 from a Class A misdemeanor to a Class C felony. The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. CJC may classify the offensive as person felonies or person misdemeanors for purposes of the rules it is required to adopt.

The rules changes classify ORS 164.162 as a Crime Category 6 on the Crime Seriousness Scale. The rules changes also include numbering changes necessitated by adding to the list numerically ordered crimes, and updated statutory citations.

**Rules Coordinator:** Craig Prins—(503) 378-4830

## 213-017-0006

### Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)
- (3) ORS 162.015 — BRIBERY — (B).
- (4) ORS 162.025 — BRIBE RECEIVING — (B).
- (5) ORS 162.065 — PERJURY — (C).
- (6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).
- (7) ORS 162.155 — ESCAPE II — (C).
- (8) ORS 162.185 — SUPPLYING CONTRABAND — (C).  
(The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 — BRIBING A WITNESS — (C).
- (10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).
- (11) ORS 162.285 — TAMPERING W/ WITNESS — (C).
- (12) ORS 162.325 — HINDERING PROSECUTION — (C).
- (13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).
- (14) ORS 163.165 — ASSAULT III — (C).
- (15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).
- (16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).
- (17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).
- (18) ORS 163.264 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B).  
(If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)
- (19) ORS 163.275 — COERCION — (C).  
(No threat of physical injury; otherwise CC 7.)
- (20) ORS 163.355 — RAPE III — (C).
- (21) ORS 163.385 — SODOMY III — (C).
- (22) ORS 163.432 — ONLINE SEXUAL CORRUPTION OF A CHILD II — (C).
- (23) ORS 163.465 — FELONY PUBLIC INDECENCY — (C).
- (24) ORS 163.525 — INCEST — (C).  
(If one of the participants is under the age of 18; otherwise CC 1.)
- (25) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).
- (26) ORS 163.688 -- POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).
- (27) ORS 164.055 — THEFT I\* — (C).
- (28) ORS 164.057 — AGGRAVATED THEFT — (B).  
(Economic loss was greater than \$50,000; otherwise CC 5.)
- (29) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY \* — (C).
- (30) ORS 164.075 — THEFT BY EXTORTION\* — (B).
- (31) ORS 164.085 — THEFT BY DECEPTION\* — (C).
- (32) ORS 164.125 — THEFT OF SERVICES\* — (C).

- (33) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE\* — (C).
- (34) ORS 164.138 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE\* — (C).
- (35) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY\* — (C).
- (36) ORS 164.162 — MAIL THEFT OR RECEIPT OF STOLEN MAIL — (C).
- (37) ORS 164.215 — BURGLARY II\* — (C).
- (38) ORS 164.315 — ARSON II\* — (C).
- (39) ORS 164.365 — CRIMINAL MISCHIEF I\* — (C).
- (40) ORS 164.377 — COMPUTER FRAUD (LOTTERY)\* — (C).
- (41) ORS 164.377(3) — COMPUTER CRIME\* — (C).
- (42) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING\* — (C).
- (43) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE\* — (C).
- (44) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE\* — (C).
- (45) ORS 164.877(1) — TREE-SPIKING — (C).
- (46) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH\* — (C).
- (47) ORS 165.013 — FORGERY I\* — (C).
- (48) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* — (C).
- (49) ORS 165.055(3)(A) — CREDIT CARD FRAUD\* — (C).
- (50) ORS 165.065 — NEGOTIATING BAD CHECKS\* — (C).
- (51) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD \* — (C).
- (52) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).
- (53) ORS 165.800 — IDENTITY THEFT\* — (C).
- (54) ORS 166.015 — RIOT — (C).
- (55) ORS 166.165 — INTIMIDATION I — (C).
- (56) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).
- (57) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).
- (58) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).
- (59) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) — PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL — (C).
- (60) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).
- (61) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).
- (62) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).
- (63) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B).  
(If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
- (64) ORS 167.057 — LURING A MINOR — (C).
- (65) ORS 167.339 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).
- (66) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION\* — (C).
- (67) ORS 647.145 — TRADEMARK COUNTERFEITING II\* — (C).
- (68) ORS 647.150 — TRADEMARK COUNTERFEITING I\* — (B).
- (69) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED — (C).
- (70) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).
- (71) ORS 813.010 — FELONY DRIVING UNDER THE INFLUENCE — (C).
- (72) ORS 819.300 — POSSESSION OF STOLEN VEHICLE\* — (C).
- (73) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C).  
(If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
- (74) ORS 830.475 — HIT AND RUN BOAT — (C).

\* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation. Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453



# ADMINISTRATIVE RULES

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635 & 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, & 876, SB 1087 (2008), Ballot Measure 57 (2008)  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09

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## Oregon Department of Education Chapter 581

**Rule Caption:** Establishes process for districts, schools and programs to appeal finding of financial report.

**Adm. Order No.:** ODE 29-2008

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 12-19-08

**Notice Publication Date:** 9-1-2008

**Rules Amended:** 581-001-0100

**Subject:** Establishes process for school districts, education service districts, public charter schools and education programs to challenge the overpayment or underpayment of funds based on information in an audit or other report. The process is two steps. The first step is an appeal of the determination and methodology and the second step is an appeal of time period for repayment.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

### 581-001-0100

#### Audit and Other Financial Appeals

(1)(a) This rule establishes the process to be used by the Department of Education for addressing the overpayment or underpayment of State School Funds from a closed year to a school district, education service district, public charter school or other program based on information received by the department in an audit or other report. A year is closed on the June 30 that is two years after the fiscal year began. For example, the fiscal year beginning July 1, 2008 is closed on June 30, 2010.

(b) The department may also use the process established by this rule for addressing the overpayment or underpayment of other state funds to a school district, education service district, public charter school or other program based on information received by the department in an audit or other report.

(c) Other reports received by the department that may be the basis to determine that an overpayment or underpayment has been made include but are not limited to information provided by a district, school or program or information from a department investigation.

(d) The department will only seek to recover payments or will pay an amount under this rule if the department received the audit or report that the overpayment or underpayment is based upon within five years of the date that the year was closed. For example, for the fiscal year beginning July 1, 2008, the department will only seek to recover or make payments based on audits or reports involving that fiscal year that were received by the department on or before June 30, 2015.

(e) The department will not seek to recover and will not pay amounts under this rule of \$750 or less.

(2) The department shall determine whether there has been an overpayment or underpayment of funds upon receipt of an audit or other report and whether the department will seek an adjustment of funds based on the audit or report. The department shall consider the following when making its determination:

(a) Applicable statutes, rules and policies;

(b) Information from the audit or report and any recommendations made in the audit or report;

(c) Any other relevant information received by the department relating to the overpayment or underpayment of funds. This may include information from an investigation conducted by the department; and (d) Prior determinations of the department on overpayment or underpayments of funds that involved the same statutes, rules or policies or similar facts.

(3)(a) The department shall notify in writing the school district, education service district, public charter school or program of, at a minimum, the following:

(A) The department's determination including the amount of the overpayment or underpayment;

(B) The basis for the determination; and

(C) The time period in which the overpayment or underpayment occurred.

(b) The department shall include a copy of this rule with the notification.

(4) The school district, education service district, public charter school or program may appeal the determination made under section (3) of this rule to the department. The appeal must be received by the department within 60 calendar days of the date of the notice and must:

(a) Be in writing;

(b) State the reasons for the appeal; and

(c) Be signed by the superintendent or other official with authority to make the appeal.

(5) Within 60 calendar days of receiving the appeal, the department shall notify in writing the school district, education service district, public charter school or program of the department's decision regarding the appeal.

(6) If the school district, education service district, public charter school or program does not appeal the determination; or if the department renders a decision on an appeal that there has been an overpayment or underpayment of funds, the department shall notify in writing the school district, education service district, public charter school or program of:

(a) The amount of the overpayment or underpayment;

(b) The time period for correcting the overpayment or underpayment; and

(c) The method for paying or collecting the funds.

(7) The department shall establish the time period for correcting any overpayment using the "Repayment Calculator" established by the School Finance Unit of the department. The department shall make the Repayment Calculator available upon request.

(8) The methods for paying or collecting the funds may include, but are not limited to:

(a) Invoices for payment.

(b) Transferring funds.

(c) In the case of State School Fund payments, adjusting subsequent payments from the State School Fund to the school district, education service district or program.

(d) In the case of other state funds, adjusting subsequent payments from those funds to the school district, education service district, public charter school or program.

(9) The school district, education service district, public charter school or program may appeal the determination of the repayment period or method of payment made under section (5) of this rule to the department. The appeal must be received by the department within 60 calendar days of the date of the notice and must:

(a) Be in writing;

(b) Establish through auditable, verifiable data that the repayment period or method of payment established in section (6) of this rule creates extreme financial hardship;

(c) Contain a statement that the information is certified as being accurate and complete; and

(d) Be signed by the superintendent or other official with authority to make the appeal.

(10) The school district, education service district, public charter school or program may propose in the appeal an alternative time period for repayment of the funds.

(11) Within 60 calendar days of receiving the appeal, the department shall notify in writing the school district, education service district, public charter school or program of the department's decision regarding the appeal. The department shall consider the following when making its determination of the time period for repayment of funds:

(a) Applicable statutes, rules and policies;

(b) Information from the audit or report and any recommendations made in the audit or report regarding the repayment period or method of payment;

(c) Any other relevant information received by the department relating to the overpayment or underpayment of funds;

(d) The financial situation of the school district, education service district, public charter school or program; and

(e) Prior determinations of the department on overpayment or underpayments of funds that involved the same statutes, rules or policies or similar facts and were made following the process prescribed by this rule.

(12) After the time period for the appeal has expired under section (11) of this rule or after the department has notified the school district, education service district, public charter school or program of the department's decision regarding the appeal, the department shall proceed to pay or collect the funds.

(13) A school district, education service district, public charter school or program may request in writing at the same time as when the district, school or program files an appeal under section (4) or (9) of this rule:

## ADMINISTRATIVE RULES

(a) A public meeting with the department. If the department grants the meeting, the department will follow statutes and rules that apply to public meetings.

(b) A mediation with the department relating to the issues that are the subject of the appeal. If the department agrees to the mediation, the mediation will be conducted by a mediator approved by the department and the department will not pay more than half the cost of the mediation.

(14)(a) The Superintendent of Public Instruction delegates to the department the authority to make corrections to distribution from the State School Fund for any year that is closed based on ORS 327.120 and the process established by this rule.

(b) The superintendent shall specify which department staff has the authority to make the determinations required by this rule. The determinations required in this rule may only be made by the superintendent or deputy superintendent.

(15) This rule first applies to the overpayment or underpayment of state funds based on information received by the department in an audit or other report on or after January 1, 2009.

Stat. Auth.: ORS 326.051, 327.125

Stats. Implemented: ORS 326.111, 327.006 - 327.133

Hist.: IEB 9-1982, f. & ef. 3-24-82; ODE 14-2007(Temp), f. & cert. ef. 7-6-07 thru 1-2-08;

Administrative Correction 1-24-08; ODE 29-2008, f. 12-16-08, cert. ef. 12-19-08

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**Rule Caption:** Prescribes requirements for school districts relating to administration of Oregon Statewide Assessments.

**Adm. Order No.:** ODE 30-2008

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 12-19-08

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 581-022-0610

**Subject:** The test administration and security requirements described in the proposed revisions to OAR 581-022-0610 are based on existing policies and procedures. By putting these test administration and security requirements into rule, ODE hopes to clarify its communication of these requirements to school districts, thereby facilitating the school districts' compliance with these requirements.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

### 581-022-0610

#### Administration of State Assessments

(1) Definitions. As used in this rule:

(a) "Accommodations" means practices and procedures in presentation, response, setting, and timing or scheduling that, when used in an assessment, provide equitable access to all students. Accommodations do not compromise the learning expectations, construct, grade-level standard, or measured outcome of the assessment as determined by the Oregon Accommodations Panel established by the Oregon Department of Education (ODE).

(b) "Allowable resources" means subject-specific resources identified as allowable in the Test Administration Manual that are made available to students by a test administrator during a testing event. Allowable resources are not student-specific, and their use does not invalidate test results. Allowable resources are the only resources that districts may give to students during administration of an Oregon Statewide Assessment.

(c) "District test coordinator" (DTC) means district personnel who ensure secure administration of Oregon Statewide Assessments as defined by Oregon Revised Statute, Administrative Rules, and the Test Administration Manual, including but not limited to supervising the work of the school test coordinators and test administrators.

(d) "Force majeure" means an extraordinary circumstance (e.g., power outage or network disturbance lasting at least one full school day) or act of nature (e.g., flooding, earthquake, volcano eruption) which directly prevents a school district from making reasonable attempts to adhere to the Test Schedule.

(e) "Impropriety" means the administration of an Oregon Statewide Assessment in a manner not in compliance with the Test Administration Manual, Oregon Revised Statute, or this rule.

(f) "Invalidation" means the act of omitting test results and student responses from the testing, reporting, and accountability systems for a given testing event for which the student may not retest.

(g) "Irregularity" means an unusual circumstance that impacts a group of students who are testing and may potentially affect student performance on the assessment or interpretation of the students' scores. A force majeure is an example of a severe irregularity.

(h) "Modification" means practices and procedures that compromise the intent of the assessment through a change in the achievement level, construct, or measured outcome of the assessment.

(i) "OAKS Online" means a mode of delivering the Oregon Assessment of Knowledge and Skills (OAKS) using a secure web-based testing application.

(j) "Oregon Statewide Assessments" means:

(A) The Oregon Assessment of Knowledge and Skills (OAKS) in:

(i) Reading/Literature;

(ii) Mathematics;

(iii) Science

(iv) Social Sciences;

(v) Writing Performance; and

(B) The English Language Proficiency Assessment (ELPA).

(k) "Paper-based administration" means administration of an OAKS assessment using one of the following ODE-provided formats:

(A) OAKS Paper/Pencil;

(B) OAKS Braille;

(C) OAKS Large Print; and

(D) OAKS Extended.

(l) "Reset" means the removal of student responses from the web-based testing application for a given testing event for which the student may retest.

(m) "School building" means facilities owned, leased, or rented by a school district, educational service district, public charter school, private school, or private alternative program.

(n) "School district" means:

(A) A school district as defined in ORS 332.002;

(B) The Oregon School for the Blind;

(C) The Oregon School for the Deaf;

(D) The Juvenile Detention Education Program as defined in ORS 326.695;

(E) The Youth Corrections Education Program as defined in ORS 326.695;

(F) The Long Term Care Program as defined in ORS 343.961; and

(G) The Hospital Education Programs as defined in ORS 343.261.

(o) "School test coordinator" (STC) means school personnel who provide comprehensive training to test administrators and monitor the testing process.

(p) "Test Administration Manual" means a manual published annually by ODE that includes descriptions of the specific policies and procedures that school districts are required to follow when administering any component of the Oregon Statewide Assessments. References to the Test Administration Manual refer to the edition in effect at the time of test administration and include appendices and any addenda published in accordance with ODE's revision policy.

(q) "Test administrator" (TA) means an individual trained to administer the Oregon Statewide Assessments in accordance with the Test Administration Manual.

(r) "Test Schedule" means the Test Schedule and Required Ship Dates published annually by ODE that includes the windows in which school districts must offer their students the Oregon Statewide Assessments and the deadline by which DTCs must ship or postmark test materials.

(2)(a) School districts, as defined in ORS 332.002, must enforce the assessment policies described in this rule for all students enrolled in a school operated by the district or enrolled in a public charter school or alternative education program that is located within the boundaries of the school district.

(b) The Oregon School for the Blind and the Oregon School for the Deaf must enforce the assessment policies described in this rule for all students enrolled in that school.

(c) The Juvenile Detention Education Program and the Youth Corrections Education Program must enforce the assessment policies described in this rule for all students enrolled in that program.

(d) The Long Term Care Program and the Hospital Education Programs must enforce the assessment policies described in this rule for all students enrolled in that program.

(3) School districts must administer Oregon Statewide Assessments in accordance with the Test Administration Manual and Test Schedule published by ODE. School districts must use student assessment data in accordance with the Adequate Yearly Progress (AYP) Policy and Technical Manual published annually by ODE. The results of these assessments are used to satisfy the requirements specified in OAR 581-022-1670 and 581-022-0606 and as a method to evaluate compliance with OAR 581-022-1210.

## ADMINISTRATIVE RULES

(4) School districts must ensure that students are administered the proper Oregon Statewide Assessment and that the testing environment satisfies the following testing conditions:

(a) School districts must ensure that Oregon Statewide Assessments are administered by a trained TA who has signed an Assurance of Test Security form for the current school year on file in the district office;

(b) School districts must administer Oregon Statewide Assessments in a school building or in an environment that otherwise complies with the Test Administration Manual;

(c) School districts must apply the following criteria in deciding whether to provide a student with an accommodation during administration of an Oregon Statewide Assessment:

(A) School districts must decide whether to provide accommodations during an assessment on an individual student basis and separately for each content area to be assessed; and

(B) For students with an Individualized Education Plan (IEP) or 504 Plan, school districts must implement the assessment decision made by a student's IEP or 504 team and documented in the IEP or 504 Plan;

(d) School districts may only administer modifications to students with an IEP or 504 Plan and only in accordance with the assessment decision made by the student's IEP or 504 team and documented in the IEP or 504 Plan. Before administering an assessment using a modification, a student's IEP or 504 team must inform the student's parent that the use of a modification on an OAKS assessment will result in an invalid assessment;

(e) School districts must provide only those subject-specific allowable resources listed in the Test Administration Manual;

(f) School districts must ensure that students do not access electronic communication devices such as cellular phones or personal digital assistants (PDAs) during an assessment; and

(g) School districts must follow all additional testing conditions specified in the Test Administration Manual.

(5) Failure by a school district to comply with Section (4) of this rule constitutes an impropriety as defined in Section 1(e) of this rule. DTCs must report all potential improprieties or irregularities to ODE within one business day of learning of the potential impropriety or irregularity in accordance with the reporting procedures contained in the Test Administration Manual.

(6) The ODE may invalidate assessment results and student responses for assessments administered under conditions not meeting the assessment administration requirements specified in Sections 3 and 4 of this rule. In rare instances, ODE may reset a student assessment at the request of the school district if ODE determines that a reset would not compromise the security or validity of the assessment.

(7) ODE counts assessments that meet the following conditions as non-participants in ODE calculations of participation and does not include such assessments in ODE calculations of performance:

(a) OAKS Assessments administered using Modifications as defined in Section (1)(h) of this rule;

(b) Invalidated assessments;

(c) Assessments administered outside the testing window specified in the Test Schedule; or

(d) Assessments shipped or postmarked after the dates identified in the Test Schedule.

(8) ODE only allows extensions to the testing window or shipping deadlines identified in the Test Schedule in cases where a force majeure occurs within three days of the close of the testing window or shipping deadline and prevents a school district from meeting the deadline. Upon receiving a force majeure extension request from the school district, ODE may permit a one-day extension of the testing window or shipping deadline for each day of the force majeure, for up to five days. The force majeure extension begins on the first school day after normal operations resume and ends no later than the last school day in the month in which the testing window closes.

(9) School districts must use OAKS Online when administering OAKS assessments in the following content areas:

(a) Mathematics;

(b) Reading/Literature;

(c) Science; and

(d) Social Science.

(10) School districts may only assess students in the content areas listed in Section (9)(a)–(c) of this rule using a paper-based administration of the OAKS assessment instead of OAKS Online if the following conditions are met:

(a) For students with an IEP or 504 Plan, the student's Plan indicates separately for each content area to be assessed that the student requires a paper-based administration; or

(b) For students without either an IEP or 504 Plan, the school district determines separately for each content area to be assessed that the web-based testing application is not appropriate for the particular student to demonstrate his or her level of proficiency. The school district must base its determination on an individual evaluation of the student and on documentation of the student's needs maintained by the school district. Such documentation is subject to audits by the ODE.

(11) School districts must administer OAKS Online using the ODE-required secure browser. If a secure browser is not available or does not operate as described in the Test Administration Manual, the DTC may request a written waiver for the current school year from the ODE Assistant Superintendent of Assessment and Information Services or the Assistant Superintendent's designee prior to the administration of assessments. School districts who receive a written waiver may administer OAKS Online using a non-secure browser either until a secure browser becomes available or for the duration of the school year for which the waiver is in effect, whichever occurs sooner. In cases where the school district demonstrates that providing students with access to an internet connection would result in undue hardship to the school district, ODE may permit the school district to administer OAKS assessments using a paper-based administration.

(12) School districts may only provide students with access to printed reading passages from OAKS Online if:

(a) The TA administering the testing session approves the student's request to print a reading passage;

(b) The printer used to print reading passages is monitored by staff who have received test security training and signed an Assurance of Test Security Form for the current school year; and

(c) Staff who have received test security training and signed an Assurance of Test Security Form for the current school year securely shred the printed reading passages immediately after the testing session in which the test was administered in accordance with the Test Administration Manual.

(13) School districts must administer ELPA annually to all students determined by the school district to be eligible for English language development (ELD) services under Title III of the No Child Left Behind Act of 2001 (NCLB), regardless of whether an eligible student actually receives ELD services.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 326.051

Hist.: 1EB 2-1985, f. 1-4-85, ef. 1-7-85; EB 14-1990(Temp), f. & cert. ef. 3-5-90; ODE 6-2002(Temp), f. & cert. ef. 2-15-02 thru 6-30-02; ODE 16-2002, f. & cert. ef. 6-10-02; ODE 30-2008, f. 12-16-08, cert. ef. 12-19-08

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**Rule Caption:** Prescribes requirements for school district relating to prevention and identification of child abuse.

**Adm. Order No.:** ODE 31-2008

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 12-19-08

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 581-022-0711

**Subject:** State law requires all school employees to report suspected child abuse to law enforcement, the Department of Human Services or a designee of the department. In addition, school employees must also report suspected child abuse to the employees' supervisors or other persons designated by the school board.

State law also requires school boards to adopt policies on the reporting of child abuse. School districts are also required, upon request, to provide records of suspected child abuse by school employees or former employees to law enforcement, the Department of Human Services and the Teacher Standards and Practices Commission.

In 2007 Senate Bill 380 amended state law to require school districts to provide training in identification and prevention strategies and for disseminating these strategies to employees, parents and community members and students.

The rule places the requirements relating to the identification and prevention of child abuse into rule division 22 and makes the requirements a part of the required standards for school districts.

**Rules Coordinator:** Paula Merritt—(503) 947-5746



# ADMINISTRATIVE RULES

581-022-0711

## Policies on Reporting of Child Abuse

(1) Each school board shall adopt policies applicable to all school district employees, specifying that child abuse by school employees is not tolerated and that all school employees report suspected child abuse to a law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015 and report suspected child abuse to the employees' supervisors or other persons designated by the school board.

(2) The policy must:

(a) Designate a person to receive reports of suspected child abuse by school employees and specify the procedures to be followed by that person upon receipt of a report;

(b) Require the posting in each school building of the name and contact information for the person designated for the school building to receive reports of suspected child abuse by school employees and the procedures the person will follow upon receipt of a report;

(c) Specify that the initiation of a report in good faith about suspected child abuse may not adversely affect any terms or conditions of employment or the work environment of the complainant;

(d) Specify that the school board or any school employee will not discipline a student for the initiation of a report in good faith about suspected child abuse by a school employee;

(e) Require notification by the school district to the person who initiated the report about actions taken by the school district based on the report;

(f) Require a written procedure for the reporting of child abuse by school employees in accordance with ORS 339.375; and

(g) Require a written procedure for providing annual training for:

(A) School employees each school year on the prevention and identification of child abuse and on the obligations of school employees under ORS 419B.005 to 419B.050 and under policies adopted by the school board to report child abuse;

(B) Parents and legal guardians of children who attend a school operated by the school board. The training shall be on the prevention and identification of child abuse and on the obligations of school employees under ORS 419B.005 to 419B.050. The training shall be provided separately from the training provided to school employees under paragraph (A) of this subsection.

(C) Children who attend a school operated by the education provider. The training shall be designed to prevent child abuse.

(3)(a) The school district shall maintain records of each reported incident of child abuse, action taken by the school district and any findings as a result of the report.

(b) A supervisor or other person designated by the school board in its policy who receives a report, shall follow the procedures required by the policy adopted by the school board under ORS 339.372 and this rule.

(c) Except as provided in paragraph (d) of this section, when a school district receives a report of suspected child abuse by one of its employees, and the school district determines that there is reasonable cause to support the report, the school district shall place the school employee on paid administrative leave until either:

(A) The Department of Human Services or a law enforcement agency determines that the report is unfounded or that the report will not be pursued; or

(B) The Department of Human Services or a law enforcement agency determines that the report is founded and the school district takes the appropriate disciplinary action against the school employee.

(d) If the Department of Human Services or a law enforcement agency is unable to determine, based on a report of suspected child abuse, whether child abuse occurred, an education provider may reinstate a school employee placed on paid administrative leave under paragraph (c) of this subsection or may take the appropriate disciplinary action against the employee.

(e)(A) Upon request from a law enforcement agency, the Department of Human Services or the Teacher Standards and Practices Commission, a school district shall provide the records of investigations of suspected child abuse by a school employee or former school employee.

(B) The disciplinary records of a school employee or former school employee convicted of a crime listed in ORS 342.143 are not exempt from disclosure under ORS 192.501 or 192.502. If a school employee is convicted of a crime listed in ORS 342.143, the school district that is the employer of the employee shall disclose the disciplinary records of the employee to any person upon request. If a former school employee is convicted of a crime listed in ORS 342.143, the education provider that was the employer of the former employee when the crime was committed shall dis-

close the disciplinary records of the former employee to any person upon request.

(C) Prior to disclosure of a disciplinary record under this paragraph, the school district shall remove any personally identifiable information from the record that would disclose the identity of a child, a crime victim or a school employee or former school employee who is not the subject of the disciplinary record.

Stat. Auth. ORS 326.051

Stat. Implemented: ORS 339.370, 339.372, 339.375, 339.377

Hist.: ODE 31-2008, f. 12-16-08, cert. ef. 12-19-08

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## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Adopt rule creating look-back provision for determining small winery privilege tax exemption.

**Adm. Order No.:** OLCC 13-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 12-20-08

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 845-010-0154

**Subject:** This rule will describe the time periods that apply when determining if a wine manufacturer meets the small winery definition for purposes of tax exemption. ORS 473.050(5) states that no tax shall be levied, collected, or imposed upon the first 40,000 gallons of wine sold "annually" in Oregon for wineries producing less than 100,000 gallons "annually." Previously licensees had to anticipate their production a year in advance to determine their privilege tax liability. If they inadvertently exceeded the production limit by even 1 gallon, they had to go back as much as 12 months and calculate the tax due as well as the associated penalty and interest. Staff recommended adoption of a new rule providing for a look-back period to determine tax exemption rather than looking ahead. Except for the first year of a wine manufacturer's production, the tax exemption will be applied to the first 40,000 gallons in the current calendar year if production was less than 100,000 gallons in the previous calendar year. This new rule will prevent the imposition of penalties and interest on small wineries in the year their production exceeds the 100,000 gallon threshold.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

### 845-010-0154

#### Small Winery Privilege Tax Exemption

For the purposes of determining exemption under ORS 473.050(5), the following time periods apply.

(1) Except as provided in section (2) of this rule, a manufacturer of wines qualifies for an exemption from tax on the first 40,000 gallons of wine sold in Oregon in a calendar year if their production of wine in the immediately preceding calendar year was less than 100,000 gallons.

(2) During its first calendar year of operation, a manufacturer of wines qualifies for an exemption from tax on the first 40,000 gallons of wine sold in Oregon in that year if their production of wine in the first calendar year of operation is less than 100,000 gallons.

Stats Auth: ORS 471 & 473, including 471.030, 471.730(1), (3) & (5), & 473.020

Stats implemented: ORS 473.050

Hist.: OLCC 13-2008, f. 12-17-08, cert. ef. 12-20-08

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**Rule Caption:** Amendments so large dealers/redemption centers can't refuse empty containers based on brand or size.

**Adm. Order No.:** OLCC 14-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 845-020-0025, 845-020-0035

**Subject:** These two rules need amendment in order to comply with changes regarding container acceptance for large dealers and redemption centers. The amendments will remove references to the brand and size of containers that large dealers and redemption centers must accept, leaving only a reference to the kind of beverage that is sold and thus which empty containers must be accepted. The references to kind, size, and brand only remain for small dealers under 5,000 square feet. The changes need to be made to comply with the

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sections of the 2007 legislature's SB 707 which take effect January 1, 2009.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-020-0025

### Application for Approval of Redemption Center

Any person desiring approval of a redemption center shall make application to the Commission upon forms to be furnished by the Commission. The application shall include the following and such additional information as the Commission may require:

- (1) Name and address of each person to be responsible for the establishment and operation of the redemption center;
- (2) Exact location and mailing address of redemption center;
- (3) Kinds of beverage containers that will be accepted at the redemption center;
- (4) Names and addresses of the dealers to be served by the redemption center;
- (5) Distances from the redemption center to the dealers to be served;
- (6) Days and hours of operation of the redemption center;
- (7) Description of parking facilities to serve the redemption center;
- (8) Evidence showing that a redemption center meets the zoning requirements and other applicable local ordinances of the regulating local jurisdiction.

Stat. Auth.: ORS 459A, 459.992 & 471.730

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0620; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09

## 845-020-0035

### When Dealer Not Required to Accept Containers

(1) The Commission does not interpret ORS 459A.710 to require a dealer to accept an empty beverage container, if the dealer:

- (a) Occupies a total enclosed space of 5,000 or more square feet in a single location and has not offered the kind of beverage for sale within the past six months;
- (b) Occupies a total enclosed space of less than 5,000 square feet in a single location and has not offered the kind, size, and brand of beverage for sale within the past six months;
- (c) Has reasonable grounds to believe the container was sold at retail outside Oregon;
- (d) Has reasonable grounds to believe that container was obtained from or through a distributor without paying the refund value. The primary goal of this subsection is to prevent distributors, recyclers or others from putting containers through the refund/return system more than once without paying the refund value; or
- (e) Has reasonable grounds to believe that container has already been redeemed, such as through a reverse vending process.

(2) Dealers must not use this rule to frustrate the requirement of the Beverage Container Act that dealers accept return of:

- (a) Up to 144 beverage containers sold in Oregon from any person in any one day, if the dealer occupies a total enclosed space of 5,000 or more square feet in a single location; or
- (b) Up to 50 beverage containers sold in Oregon from any person in any one day, if the dealer occupies a total enclosed space of less than 5,000 square feet in a single location.

Stat. Auth.: ORS 459A, 459.992, 471.030 & 471.730

Stats. Implemented: ORS 459A.715

Hist.: LCC 1-1982(Temp), f. & ef. 1-22-82; LCC 5-1982, f. 3-26-82, ef. 4-1-82; OLCC 10-1987, f. 3-13-87, ef. 4-1-87; OLCC 15-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 17-2007(Temp), f. & cert. ef. 9-17-07 thru 3-15-08; OLCC 2-2008, f. 1-16-08, cert. ef. 3-16-08; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09

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## Oregon State Lottery Chapter 177

**Rule Caption:** Amendments implement Indoor Clean Air Act, application resubmission timeframe, deposit requirements, equipment rules; housekeeping changes.

**Adm. Order No.:** LOTT 12-2008

**Filed with Sec. of State:** 12-23-2008

**Certified to be Effective:** 1-1-09

**Notice Publication Date:** 12-1-2008

**Rules Amended:** 177-040-0001, 177-040-0005, 177-040-0030, 177-040-0050, 177-040-0052, 177-045-0000, 177-045-0010, 177-045-0030

**Rules Repealed:** 177-045-0040

**Subject:** The Oregon State Lottery amended the above referenced administrative rules.

Substantive amendments were made to implement the Oregon Clean Air Act and clarify that Lottery products may not be sold in an environment where Lottery employees or representatives are exposed to tobacco smoke.

OAR 177-040-0001 was amended to shorten the timeframe for a resubmission of a retailer application from two years to one year after which a complete personal disclosure is required instead of an update.

OAR 177-045-0040 is being repealed.

Other amendments were for general housekeeping purposes, including grammatical changes, the addition of captions, insertion of trade and service marks, deletion of extraneous materials, and clarification of meaning.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0001

### General Application Requirements

(1) General: Any person may request an application from the Lottery.

(2) Disclosure Required: The Director may require any degree or type of disclosure necessary of the applicant or any other person in order to assure the security and integrity of the Lottery. An applicant must disclose to the Lottery all information required by the Director.

(3) Application Required: An applicant must file a complete application. The application shall include, but not be limited to, a requirement that the applicant provide documents and other information relating to the applicant's personal, financial, and criminal background and an applicant's associations with other persons. The application shall also include, but not be limited to:

(a) Authorization: An authorization, signed by the applicant, to investigate the applicant;

(b) Consent: Written consent to allow the examination of all accounts and records to be considered by the Director to be material to the application;

(c) Disclosure: Disclosure of the source of funds, financing, and business income used for the purchase and operation of the applicant's business.

(d) Premises Ownership: If the premises are not wholly owned by the applicant, the applicant shall furnish to the Lottery:

(A) A statement of the name and address of the owner or owners of such premises;

(B) A copy of all agreements whereby the applicant is entitled to possession of the premises;

(C) Complete information pertaining to the interest held by any person other than the applicant, including interest held under any mortgage, deed of trust, bond or debenture, pledge of corporate stock, voting trust agreement, or other device; and

(D) Such other information as the Lottery may require.

(4) Compliance Required: An applicant's failure to comply with any application or disclosure requirement may be grounds for denial or rejection of the application.

(5) Material Change: An applicant must immediately report to the Lottery, in writing, any material changes to the application during the application process. A "material change" means any change that may affect the Lottery's evaluation of the application based on the requirements contained in Division 40 of these rules.

(6) Waiver: In submitting an application, the applicant expressly waives any claim against the State of Oregon, its agents, officers, employees, and representatives, and the Oregon State Lottery, its Director, agents, officers, employees, and representatives for damages that may result. Each applicant also accepts any risk of adverse public notice, embarrassment, criticism, damages, or claims which may result from any disclosure or publication by a third party of any public information on file with the Lottery.

(7) Resubmission: When an applicant has submitted a complete personal disclosure to the Lottery within the preceding twelve months, the applicant need not necessarily submit a new personal disclosure, but if the applicant does not submit a new personal disclosure, the applicant must submit, on forms approved by the Director, a sworn statement regarding any changes which may have occurred regarding the accuracy of the information provided in the previous personal disclosure. The Director may require the applicant to submit a complete personal disclosure if the Director determines substantial changes have occurred.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

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Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

## 177-040-0005

### Criteria Precluding Entering Into a Contract

The Lottery will not enter into a retailer contract when an applicant:

(1) **Age:** Is under 18 years of age.  
(2) **Exclusivity:** Will be engaged exclusively in the business of selling Lottery tickets or shares.

(3) **Lottery Employee:** Is an employee of the Lottery.

(4) **Supplier/Manufacturer:** Is or will be owned or controlled by any entity or any subsidiary or parent corporation thereof, that is a supplier of instant tickets or a manufacturer of computer equipment used to determine winners in Lottery games.

(5) **Unauthorized Entity:** Is a corporation or other form of business that is not incorporated in Oregon or authorized to do business in Oregon.

(6) **Smoking:** Operates a business where selling Lottery tickets or shares would expose Oregon State Lottery employees, representatives, or agents to a smoking environment, as defined in OAR 177-045-0000.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

## 177-040-0030

### Retailer Cash Deposit or Bond

If the Director has reason to believe an applicant or retailer may not be financially sound, the Director may require a Lottery retailer to post:

(1) **Irrevocable Letter of Credit:** A \$5,000 irrevocable letter of credit issued by a banking institution as defined in ORS 706.008(4); or

(2) **Bond:** A \$5,000 bond issued by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon and approved by the Director.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.300

Hist.: LC 9-1992, f. & cert. ef. 8-26-92; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-03; LOTT 9-2003, f. & cert. ef. 6-30-03; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

## 177-040-0050

### Retailer Duties

(1) **General:** This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in OAR Division 177, ORS Chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) **All Retailers:** All Lottery retailers shall:

(a) **Stock Equipment:** Keep all Lottery equipment on the retailer's premises stocked with a variety of Scratch-It<sup>SM</sup> tickets, play slips, computer-generated tickets, and any other Oregon Lottery<sup>®</sup> product required to be sold. Unless exempted by the Lottery, if a Lottery retailer fails to stock or replenish these items as they are made available for sale by the Lottery, or as they are depleted because of purchase or use, the Lottery may remove the equipment.

(b) **Perform Minor Maintenance:** Replace ribbons, ticket stock, and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(c) **Maintain Paper Stock:** Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(d) **Obtain Permits:** Be required to arrange for and obtain all necessary permits required by federal, state, and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(e) **Pay Amounts Due:** Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) **Traditional Retailers:** A traditional game Lottery retailer shall:

(a) **Scratch-It<sup>SM</sup> Validation:** Validate a Scratch-It<sup>SM</sup> ticket prize through the Instant Ticket System (ITS) and destroy it after validation and payment of the prize. Any traditional Lottery retailer who does not destroy

the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) **On-Line Validation:** Validate On-Line game prizes through the On-Line terminal before paying an On-Line prize.

(c) **Underage Play:** Monitor player-operated vending machines, as defined in OAR 177-045-0000, to prevent underage play.

(4) **Breakopen Retailers:** A Breakopen game Lottery retailer shall, after validation and payment of the prize, destroy the Breakopen.

(5) **Video Retailers:** A Video Lottery<sup>SM</sup> game retailer shall:

(a) **Cash Slip Validation:** Validate Video Lottery<sup>SM</sup> cash slips through the Video Site Controller (VSC) before paying a Video Lottery<sup>SM</sup> prize.

(b) **Restrict Visibility:** Restrict Video Lottery<sup>SM</sup> game terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) **Age-Posted Area:** Maintain Video Lottery<sup>SM</sup> game terminals in an area of the business that is prohibited to minors. The area must be posted as such by the Oregon State Lottery or the Oregon Liquor Control Commission. This restriction against minors does not apply to minors who qualify under the exceptions permitted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(6) **Sanctions:** The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share. This includes, but is not limited to: Imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions for failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR Chapter 177.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99, Administrative correction 11-17-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

## 177-040-0052

### Non-Sufficient Funds

(1) **Definitions:** For purposes of this rule:

(a) **"Working day"** means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. when the Lottery Headquarters in Salem is open for business.

(2) **Retailers with Temporary Contract or Letter of Authority:** If an electronic funds transfer (EFT) from a retailer with a temporary contract or a letter of authority issued under ORS 461.335 is not made due to non-sufficient funds (NSF) in the retailer's EFT account, and non-payment is not excused under this rule, the Lottery shall terminate the retailer's temporary contract or letter of authority, and disable or remove Lottery equipment from the retailer's premises. Processing of the retailer's application for a retailer contract otherwise may proceed.

(3) **First NSF:** The first time that a Lottery retailer's EFT payment to the Lottery is not made due to non-sufficient funds in the retailer's EFT account, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay, by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery's administrative expenses in processing the NSF.

(c) **Withhold Bonus:** Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) **Terminate Contract:** Terminate the retailer's contract and remove the Lottery's equipment if the retailer fails to pay, by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled.

(4) **Second NSF:** When a retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a second time within one year of the retailer's first NSF, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay, by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery's administrative expenses in processing the NSF and post a



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bond or make a cash deposit if allowed by the Director under paragraph (A) of subsection (d) of this section.

(c) **Withhold Bonus:** Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) **Terminate Contract:** The Lottery shall terminate the retailer's contract and remove the Lottery's equipment:

(A) Unless the Director allows the retailer to post:

(i) Cash: A cash deposit by certified funds; or

(ii) Bond: A bond issued by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon and approved by the Director. The Director shall determine the amount, the term, and any other applicable conditions. The amount of the bond or cash deposit will be no less than twice the retailer's weekly average EFT transfers, calculated using the immediately preceding three calendar months; or

(B) If the retailer fails to pay, by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled, or fails to post a bond or make a cash deposit within five working days of the date the equipment was disabled when allowed under paragraph (A) of this subsection.

(5) **Third NSF:** When a Lottery retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a third time within one year of the retailer's first NSF, the Lottery shall:

(a) **Notify the Retailer:** Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) **Disable Equipment:** Disable the Lottery's equipment on the retailer's premises until the contract is terminated and the equipment is removed.

(c) **Payment:** Require the retailer to pay, by certified funds, the amount of money that was to be paid by EFT plus the \$50 fee within five working days of the date the Lottery equipment on the retailer's premises was disabled.

(d) **Forfeit Bonus:** Require the retailer to forfeit any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs.

(e) **Terminate Contract:** Terminate the retailer's lottery contract and remove the Lottery's equipment.

(6) **NSF Due to Financial Institution Error:** Any NSF that is due to an error committed by the retailer's financial institution does not count toward the three NSF limit in this rule as long as the error is corrected and Lottery receives documentation from the retailer's financial institution. The financial institution must substantiate to the Director's satisfaction the financial institution's responsibility for causing the NSF, and that but for the financial institution's error, sufficient funds would have been available in the retailer's account to cover the EFT payment.

(7) **Financial Institution Closures:** Any NSF that is due to an unexpected temporary closure of the retailer's financial institution does not count toward the three NSF limit in this rule as long as the NSF is corrected and Lottery receives documentation from the retailer's financial institution that substantiates to the Director's satisfaction the reason for the financial institution's unexpected closure. The retailer shall make the deposit before 5 p.m. of the next day the financial institution is open or available for deposits to be made. If the deposit is not made as described, the Lottery shall treat it as an NSF under these rules.

(8) **Retailer's Obligations Survive Contract Termination:** Termination of the retailer's contract does not release the retailer from any obligation to pay all amounts due the Lottery under this rule and the retailer's Lottery contract. The Lottery may make a claim upon any bond, or cash deposit posted under this rule, and apply the money to any of the retailer's obligations owed to the Lottery. The Lottery may initiate collection action on behalf of the State to collect all amounts due.

(9) **Director's Discretion:** The Director may make exceptions to these requirements based upon the facts and circumstances of any particular payment by a retailer which is rejected for non-sufficient funds.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

### 177-045-0000

#### Definitions

For purposes of OAR chapter 177, division 45, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **"Equipment"** means all equipment placed by the Lottery or a Lottery vendor on a retailer's premises including, but not limited to, Video Lottery<sup>SM</sup> game terminals and all equipment necessary for their operation, player-operated vending machines, validation terminals, On-Line sales terminals, display equipment, and interior and exterior signage.

(2) **"Player-operated vending machine"** means an electrical, electronic, or electro-mechanical device that dispenses Scratch-it<sup>SM</sup> or other Oregon Lottery® tickets directly to a consumer upon payment of the appropriate purchase price.

(3) **"Occurrence"** means an accident, incident, or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant losses. Each loss by earthquake, flood, freeze, or windstorm will constitute a single occurrence. If more than one earthquake or flood occurs within any 72-hour period, the State of Oregon will determine the moment when the time period began.

(4) **"Premises"** has that definition as used in OAR 177-040-0000(6).

(5) **"Smoking environment"** means that portion of a retailer's business where smoking of tobacco is occurring or tobacco smoke is present

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

### 177-045-0010

#### Equipment Management Generally

(1) **General Equipment Management:** The Director of the Lottery shall manage Lottery equipment pursuant to ORS 461.200. The Director may place or remove Lottery equipment on a retailer's premises when in the judgment of the Director it is in the best interests of the Lottery. The Lottery may discontinue or remove existing equipment, or may implement new or replacement equipment at any time and for any reason the Director determines is in the best interests of the Lottery.

(2) **Retailer's Sales:** A retailer's sales, or in the case of an applicant, estimated sales, of Lottery tickets and shares are the prime factor considered by the Director in managing Lottery equipment.

(3) **Equipment Inspection:** The Lottery may access, inspect, furnish, repair, place, replace, upgrade, modify, add, or remove Lottery equipment at a retailer's premises at any time during regular business hours.

(4) **Obsolete and Defective Equipment:** The Lottery may replace obsolete or defective equipment with new, used, or refurbished replacement equipment.

(5) **Test Equipment:** With the consent of the retailer, the Lottery may deploy equipment on the retailer's premises to test the equipment. The Director or the Director's designee shall determine how long the equipment will remain and the conditions of the test.

(6) **Other Laws:** This rule does not preclude the Lottery from removing any or all of its equipment pursuant to any other applicable law, rule, or contract provision.

(7) **Smoking Prohibition:** The Lottery will not place its equipment, terminals, tickets, or shares, in any smoking environment. The Lottery does not permit its employees to enter into, or to place Lottery equipment, terminals, tickets, shares, or advertising in any smoking environment, or to be exposed to tobacco smoke.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09

### 177-045-0030

#### Video Lottery Terminals

(1) **Allocation of Terminals:** In the exercise of the Director's discretion and subject to all other requirements, the Director may allocate and reallocate the Lottery's Video Lottery<sup>SM</sup> game terminals among Video Lottery<sup>SM</sup> retailers at any time and in any manner. The Director shall consider:

(a) **Availability:** The availability of the terminals and related equipment.

(b) **Public Access:** Adequate and convenient public access to Video Lottery<sup>SM</sup> games statewide.

(c) **Retailer Sales:** The actual or projected net video sales generated from the play of Video Lottery<sup>SM</sup> games at each Video Lottery<sup>SM</sup> retail location. A new or existing Video Lottery<sup>SM</sup> retailer shall generate a minimum of \$200 in average net video sales per week per terminal as determined by the Director. The Lottery shall calculate the average using any 90-day or greater time period determined by the Lottery. Net video sales are calculated by subtracting prizes awarded on a Video Lottery<sup>SM</sup> game terminal

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minimal from wagers placed on the terminal. The Director may remove one or more terminals from a retail location when the retailer is unable to meet the minimum sales requirement.

(d) Floor Space: The Lottery requires each Video Lottery<sup>SM</sup> retailer to have a minimum amount of floor space per each Video Lottery<sup>SM</sup> game terminal. A retailer with less than 360 square feet of retail floor space is not eligible to receive any Video Lottery<sup>SM</sup> game terminals for that business. A retailer with 360 square feet of retail floor space may receive up to three Video Lottery<sup>SM</sup> game terminals. For each 120 square feet of retail floor space over the required minimum square footage of 360 square feet, a retailer may be eligible for one additional Video Lottery<sup>SM</sup> game terminal up to the maximum number of terminals permitted under Oregon law.

(A) Retail Floor Space: Total retail floor space includes all areas open to the public in the business including, but not limited to, restrooms and hallways, but does not include offices, kitchens, storage rooms, and any other areas not generally open to the public. Total retail floor space does not include any space or portion of the business that is a common area or is shared with other businesses, or that is not contiguous with the areas where the Video Lottery<sup>SM</sup> game terminals are located or proposed to be located.

(B) Removal of Terminals: The Director may remove or limit the number of Video Lottery<sup>SM</sup> game terminals in a business to bring it into compliance with the floor space standards.

(C) Existing Retailers: This section, unless otherwise provided, does not apply to existing Video Lottery<sup>SM</sup> retailers whose space requirements were determined under a previous version of this rule.

(2) Additional Requirements:

(a) Restricted Visibility: The Lottery will only place Video Lottery<sup>SM</sup> game terminals in those areas of a business with restricted visibility from areas outside of the business, and from the view of dining or other areas where minors are permitted to linger. Under certain circumstances, Oregon Liquor Control Commission rules may permit minors in the same areas as properly placed Video Lottery<sup>SM</sup> game terminals. This rule is not intended to override any OLCC exception.

(b) Adjacent Businesses: When two or more adjacent businesses appear to the Director to be a single business, or are operated by the same or commingled ownership, then the Lottery may limit such businesses to the maximum number of Video Lottery<sup>SM</sup> game terminals permitted under Oregon law for one business as the total number of terminals authorized for both or more such businesses.

(3) Reconsideration: Upon written request by a Video Lottery<sup>SM</sup> retailer, the Director may reconsider any Video Lottery<sup>SM</sup> game terminal allocation decision made under this rule pertaining to that retailer.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. & cert. ef. 1-1-09

## Oregon State Treasury Chapter 170

**Rule Caption:** Modification of rules related to the issuance and management of Oregon State and local government bonds.

**Adm. Order No.:** OST 7-2008

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 12-29-08

**Notice Publication Date:** 11-1-2008

**Rules Adopted:** 170-055-0001, 170-060-0001, 170-060-0005, 170-061-0300, 170-061-0400

**Rules Amended:** 170-060-1010, 170-061-0000, 170-061-0015, 170-061-0020, 170-061-0100, 170-061-0200, 170-062-0000, 170-063-0000, 170-071-0005

**Rules Repealed:** 170-055-0005, 170-061-0005

**Subject:** Based on the recommendations of the Oregon Law Commission, the 2007 Legislature adopted HB 3265 which modernized and updated a variety of laws related to the issuance and management of both State and local debt in Oregon. These statutory changes were codified in ORS Chapters 286A (for State bonds) and 287A (for all other public bodies' bonds). In general, the rules listed above establish, repeal, or amend existing OARs of the Debt Management Division of the State Treasurer's office to bring them into conformance with ORS Chapters 268A and 287A. One of the above-listed rules,

OAR 170-061-0015, modifies the fees charged for debt management services provided by the agency.

**Rules Coordinator:** Sally Wood—(503) 378-4990

### 170-055-0001

#### Definitions and Notice to Treasurer

(1) Terms used in OAR 170-055 shall have the meanings given in ORS chapters 286A and 287A unless otherwise specifically defined herein.

(2) "OST" means the Office of the State Treasurer.

(3) "State agency" means a related agency defined in ORS 286A.001(8).

(4) Whenever notice or information is required to be submitted by statute or rule to the Office of the State Treasurer acting on its own behalf or as staff to the Municipal Debt Advisory Commission or the Private Activity Bond Committee, such notice or information may be submitted:

(i) By electronic submission to: DMD@OST.state.or.us;

(ii) By mail or delivery to: Debt Management Division of the Office of the State Treasurer, 350 Winter Street NE, Suite 100, Salem, Oregon 97301; or

(iii) By facsimile to 503-378-2870.

Stat. Auth.: ORS 286A.005, 287A.195, 287A.360 - 287A.380

Stats. Implemented: ORS 286A.095, 287A.195, 287A.360 - 287A.380

Hist.: OST 7-2008, f. & cert. ef. 12-29-08

### 170-060-0001

#### Definitions

Terms used in OAR 170-060 shall have the meanings given in ORS chapter 287A unless otherwise specifically defined herein:

(1) Definitions.

(2) "Counterparty" means an entity with whom a public body enters into an agreement for the exchange of interest rates.

(3) "Swap policy" means the written policy regarding the use of agreements for the exchange of interest rates adopted by the public body.

(4) "MDAC" means the Oregon Municipal Debt Advisory Commission.

(5) "OST" means the Office of the State Treasurer.

Stat. Auth.: ORS 178.050

Stats Implemented: ORS 183.355

Hist.: OST 7-2008, f. & cert. ef. 12-29-08

### 170-060-0005

#### Notice of Proposed Rulemaking

Prior to the adoption, amendment, or repeal of any permanent rule, the Chairman of the MDAC or their designee shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the intended action.

(2) By providing a copy of the notice to persons on the MDAC's mailing list established pursuant to ORS 183.335 (7) at least 28 days before the effective date of the rule. Providing a copy means by mail, e-mail, notice of posting to a web-site, or any other means whereby interested parties have timely access to the permanent rule and the intended action.

(3) By providing a copy of the notice to the following persons, organizations, or publications:

(a) Selected cities, counties, school districts, port districts;

(b) Any district or other interested party as determined by the MDAC;

(c) League of Oregon Cities;

(d) Association of Oregon Counties;

(e) Oregon School Boards' Association;

(f) Oregon Bond Counsel.

Stat. Auth.: ORS 178.050

Stats Implemented: ORS 183.355

Hist.: OST 7-2008, f. & cert. ef. 12-29-08

### 170-060-1010

#### Terms, Conditions, and Reporting Requirements for an Agreement for Exchange of Interest Rates

(1) Public bodies shall only enter into agreements for the exchange of interest rates as authorized by, and in compliance with, ORS 287A.335.

(2) Amount. The notional amount of an agreement that relates to outstanding borrowing may not exceed the outstanding principal amount of the borrowing when the agreement is entered into. The notional amount of an agreement that relates to a borrowing that the public body expects to issue in the future may not exceed the principal amount of the borrowing reasonably anticipated to be outstanding when payments are required to commence under the agreement (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board as required by section 3 of this rule).

## ADMINISTRATIVE RULES

(3) Authorization. With respect to an obligation or obligations that a public body has issued or will issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board), subject to ORS 287A.335 or as the same may be amended in the future, the public body may designate the particular obligation to which an agreement relates after execution of the agreement. Such a designation after execution of the agreement shall be considered an agreement modification, and the public body shall notify the MDAC of such modification in accordance with this rule.

(4) Swap Policy. The public body shall have adopted a swap policy as part of its ongoing responsibility to manage its debt obligations. In adopting a swap policy, the public body should review and consider the current edition of the Government Finance Officers Association Recommended Practice: "Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy" and the "MDAC Sample Interest Rate Swap Policy". Included in the swap policy, the public body shall provide a general description of risks related to agreements for exchange of interest rates and the means by which the public body will address those risks. The swap policy shall also provide that an analysis of the risks and benefits of each agreement shall be presented to the governing body prior to executing such agreement.

(5) MDAC Notice. The public body shall notify the MDAC of the execution of an agreement for the exchange of interest rates by delivering to the OST, as provided in OAR 170-055-0001(3), within 30-days of its execution, the following:

(a) An MDAC Form 3.

(b) An executed copy of the resolution, minutes of the board or other authorizing directive of the director or board, specifically authorizing the public body to engage and participate in an agreement for the exchange of interest rates. The authorization shall state the reason that the public body is authorizing the agreement, shall include a finding that the agreement is being executed for permitted purposes and complies with the authorizing act and this rule.

(c) The public body's swap policy.

(d) The legal opinion, if any, addressing the validity of the public body's obligations under the agreement for the exchange of interest rates that is delivered in connection with the agreement.

(6) Terms. An agreement shall contain terms and conditions consistent with the swap policy adopted by the public body including, but not limited to:

(a) The notional amount of the agreement;

(b) Payment terms;

(c) The term of the agreement;

(d) Insurance, collateral or other assurances of payment provided in compliance with ORS 287A.335 or as the same may be amended in the future;

(e) Provisions for termination in advance of the scheduled term;

(f) Events of default and related remedies;

(g) Assurances that the counterparty will maintain a minimum rating with respect to its termination payment obligations in one of the top three rating categories without gradation by at least two nationally recognized rating agencies or that the counterparty's obligations will be collateralized;

(h) Modifications to standard ISDA swap documentation, as specified in the Schedule as may be required by the public body's policy or governing law;

(i) Limitations on allowable collateral and frequency of the valuation of such collateral; and

(j) Agreement valuation methodology.

(7) Ratings Reduction. The public body shall notify the MDAC of any material change in the public body's obligations or benefits under the agreement for the exchange of interest rates that result from a reduction in the ratings of the public body, a counterparty or guarantor.

(8) Modification or Termination. If after executing an agreement for the exchange of interest rates, the agreement is modified or terminated for any reason prior to its stated end date, the public body shall notify the MDAC within 30-days after completion of the modification and identify the reasons for such termination or modification and the anticipated change in obligation to the public body resulting from the termination or modification.

Stat. Auth.: ORS 287A.335

Stats. Implemented: ORS 287A.335

Hist.: OST 6-2004(Temp), f. 7-12-04, cert. ef. 7-13-04 thru 12-30-04; OST 7-2004, f. & cert. ef. 11-18-04; OST 2-2005(Temp), f. 10-5-05, cert. ef. 10-6-05 thru 4-4-06; Administrative correction 4-19-06; OST 1-2006, f. & cert. ef. 6-1-06; OST 7-2008, f. & cert. ef. 12-29-08

### 170-061-0000

#### Notice and Reporting Requirements by Public Bodies When Issuing Bonds

(1) Terms used in OAR 170-061 shall have the meanings given in ORS chapters 286A and 287A unless otherwise specifically defined herein.

(2) Definitions.

(a) "MDAC" means the Oregon Municipal Debt Advisory Commission.

(b) "OST" means the Office of the State Treasurer.

(c) "Bond marketing date" is the date the public body and underwriter or placement agent agree on the market terms of the bonds. For competitive bid bonds this is the date bids are opened and the bonds are awarded to public bidders pursuant to a published notice of bond sale. For negotiated sales or private placements this means the date the public body gives the verbal award to the underwriter or placement agent.

(d) "Called bonds" are bonds for which the public body has exercised the option or requirement to redeem before the stated maturity date. The call date is the date the bond may be redeemed.

(e) "Closing" means the date the bonds are delivered to the initial bond purchaser and the public body receives payment for the bonds.

(f) "Delivery date" means the date shown by the United States Postal Service or other delivery services' cancellation mark or, if provided electronically, the delivery date is the date shown as electronically received by the OST.

(g) "Governing body" means the person, board, commission, council, officer or other body authorized to direct the issuance of bonds.

(h) "Issuer" means a public body or the State Treasurer.

(i) "Official statement" means the document published by a state agency or public body that discloses material information on the issue of bonds including the purposes of the issue, repayment methods, and the financial, economic and social characteristics of the issuing government. A final official statement is printed after the final terms of the bonds are available.

(j) "Paying officer" means the public officer, other than a fiscal or paying agent, to whom bonds may be presented for payment.

(k) "State agency" means a related agency defined in ORS 286A.001(8).

(l) "True Interest Cost" (TIC) means the annual discount rate that, when used to discount all debt service payments on the issue to the date of initial delivery of the issue, using a compounding interval equal to the interest payment periods for the issue, results in the aggregate present value of such debt service payments being equal to the original purchase price (including accrued interest) of the issue.

(3) Notice of bond sales. Public bodies shall provide notice of bond sales to MDAC by submitting MDAC Form 1 as set forth in OAR 170-055-0001(4). Notice must include preliminary bond sale information such as: the issuing entity, type of bond, anticipated bond marketing date, bond par amount, project or purpose of the bond issue, source of revenues used to repay the bonds, anticipated closing date, bond counsel, financial advisor and other summary information identified on MDAC Form 1.

(4) Timing. The public body shall provide notice of the bond sale not less than 10 days preceding the bond marketing date.

(5) Confirmation of notice. After receipt of notice the MDAC shall provide a letter verifying such. The letter includes a statement that the notice complies with OAR 170-061-0000 and is conclusive evidence of such compliance. Compliance letters are sent to bond counsel. Noncompliance letters state the reason for non-compliance and are sent to the public body and its' bond counsel.

(6) Postponement. For postponed or changed bond sales the public body complies with notice requirements when, on a best efforts basis, it submits an updated MDAC Form 1 to the MDAC as set forth in OAR 170-055-0001(4).

(7) Reporting results. Any public body issuing bonds shall report bond sale results by submitting MDAC Form 2 to the MDAC within five business days after the bond marketing date. Sale results must include all of the information identified on MDAC Form 2. A public body preparing an official statement shall provide a final copy of such official statement within five business days after the closing to the MDAC. The public body and its' bond counsel will receive written notice of non-compliance if sale results are not reported.

(8) Exceptions. The OST, at its discretion, may waive any or all provisions of this rule. OST will notify the MDAC of waivers.

Stat. Auth.: ORS 287A.634 & 287A.640

Stats. Implemented: ORS 287A.634 & 287A.640

Hist.: TD 2-1981(Temp), f. & ef. 12-23-81; TD 1-1982(Temp), f. & ef. 1-11-82; TD 2-1982(Temp), f. & ef. 1-27-82; TD 4-1982, f. & ef. 7-7-82; TD 1-1985, f. & ef. 1-24-85; TD



# ADMINISTRATIVE RULES

2-1994, f. & cert. ef. 9-9-94; TD 1-1995, f. 6-29-95, cert. ef. 7-3-95; TD 2-1995, f. & cert. ef. 12-26-95; OST 7-2008, f. & cert. ef. 12-29-08

## 170-061-0015

### Fees Charged by the Debt Management Division s

(1) State agencies. The OST shall charge the following fees in connection with the services, duties and activities of the OST related to bonds issued for state agencies by the State Treasurer:

(a) Agency Bond Issues of \$15 million or less. For a single series bond sale of \$15 million or less, a state agency will be charged \$15,000 per sale. For a bond sale of \$15 million or less by a single state agency with multiple series, the state agency will be charged the greater of

(A) \$15,000; or

(B) \$6,000 per series. For a bond sale of \$15 million or less by two or more state agencies, each agency will be charged the greater of;

(C) \$7,500 or

(D) \$6,000 for each series sold for the agency. This subsection does not apply if the bond sale is a private placement conduit sale of \$5 million or less as described below in subsection (c).

(b) Agency Bond Issues of more than \$15 million. For a single series bond sale of more than \$15 million, a state agency will be charged \$20,000. For a bond sale of more than \$15 million by a single state agency with multiple series, the state agency will be charged the greater of

(A) \$20,000; or

(B) \$7,000 per series. For a bond sale of more than \$15 million by two or more state agencies, each agency will be charged the greater of;

(C) \$10,000; or

(D) \$7,000 for each series sold for the state agency. This subsection does not apply if the bond sale is a private placement conduit sale described below in subsection (c).

(c) Conduit Bond Sales. A state agency will be charged \$5,000 for conduit bond sales of \$5 million or less that are payable solely from moneys owed by a party other than the State of Oregon, with no recourse for payment to the State of Oregon, and when the bonds are sold by a private placement, with no publicly disseminated official statement or other offering circular, to one or more sophisticated investors, accredited investors or qualified institutional buyers.

(d) Advance refunding plan application and review. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged. When necessary to review complex proposals, OST may consult recognized experts whose fees will be charged to the agency, whether or not the refunding is approved or completed.

(e) Tax Anticipation Notes. A state agency shall be charged \$30,000 for each sale of tax anticipation notes.

(f) Interest Rate Exchange Agreements. In addition to any other fee, \$25,000 will be charged for the review and approval of a state agency's first executed interest rate exchange agreement for a specific bond program of the agency. After the first agreement, a fee of \$10,000 will be charged for each executed interest rate exchange agreement subsequently entered into by the agency for the same bond program or indenture. These charges do not include costs such as interest rate exchange advisor fees, rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(2) Public Bodies. OST shall charge the fees set forth below in connection with the services, duties and activities of the OST related to bonds issued by public bodies in Oregon; expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. The application fee for submission of an advance-refunding plan is \$350. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged.

(b) Oregon School Bond Guarantee Program. School Districts that submit an application for participation in the Oregon School Bond Guarantee Program shall submit an application fee of \$200 to OST at the time their application is submitted. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee equal to .03% (.0003) of the total principal and interest due on the bonds, assuming the bonds are paid on their scheduled maturity or mandatory redemption dates.

(3) Municipal Debt Advisory Commission. OST shall charge the following fees in connection with the services, duties and activities of the OST as staff to the Municipal Debt Advisory Commission.

(a) Overlapping debt report. Report length, complexity and the time required to produce an overlapping debt report is determined by the number of districts which overlap the district for which the report is generated and the number of such districts which have issued debt. A base fee of \$200 shall be charged for all overlapping debt reports. An additional \$5 shall be charged for each overlapping indebted district up to ten districts; then an additional \$2.50 for each overlapping indebted district up to thirty districts; then an additional \$1 for each overlapping indebted district over thirty districts.

(b) Other fees and charges. Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$115 per hour.

(4) Private Activity Bonds.

(a) Current Year Allocation. State agencies or public bodies that submit an application for allocation of the state's private activity bond volume limit ("CAP") for the current year to the Private Activity Bond Committee under OAR 170-071-0005 shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive CAP and sell bonds under that allocation shall submit to OST, within 10 business days of closing of any such private activity allocation bonds:

(A) for a bond sale of \$10 million or less, a fee equal to \$3,000; or

(B) for a bond sale of more than \$10 million, a fee equal to \$10,000.

(b) Carry Forward Allocation. State agencies or public bodies that submit an application for carry forward CAP allocation under OAR 170-071-0005(10) shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive carry forward CAP shall pay to OST:

(A) For a bond sale of \$10 million or less, a fee equal to \$3,000 of which the first \$500 is payable within 10 days of the date of the notice of allocation by OST, and the balance is payable within 30 days of the closing of the bond sale; or

(B) For a bond sale of more than \$10 million, a fee equal to \$10,000 of which the first \$2,000 is payable within 10 days of the date of the notice of allocation by OST, and the balance payable within 30 days of the closing of the bond sale.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 286A.014, 287A.370, 287A.634

Stats. Implemented: ORS 287A, 286A

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06; OST 7-2008, f. & cert. ef. 12-29-08

## 170-061-0020

### Requirements for Notice of Call

(1) Notice of Bond Call. Any public body redeeming bonds prior to their stated maturity shall notify the MDAC of its intention to call bonds no later than the date the first bond is called. The notice to the MDAC shall include as a minimum the:

(a) Name or title of issue;

(b) The public body who sold the bonds;

(c) Issue date;

(d) Original issue amount;

(e) Purpose of issue;

(f) Maturity dates, call dates and principal amounts of the bonds called;

(g) Amount outstanding upon completion of the call;

(h) Coupon interest rate;

(i) Call premium, if any; and

(j) Remaining principal amortization schedule.

(2) Address. The notice required by this rule shall be provided in the manner set forth in OAR 170-055-0001(4).

(3) Exceptions. The OST, at its discretion, may waive any or all provisions of this rule. OST will notify the MDAC of waivers.

Stat. Auth.: ORS 287A.634

Stats. Implemented: ORS 287A.634

Hist.: TD 1-1991, f. & cert. ef. 10-30-91; TD 2-1994, f. & cert. ef. 9-9-94; TD 2-1995, f. & cert. ef. 12-26-95; OST 7-2008, f. & cert. ef. 12-29-08

## 170-061-0100

### Procedures for the Issuance of State of Oregon Economic Development Revenue Bonds Issued under ORS 285B.320 to 285B.371 (EDRB)

(1) Terms and Conditions of Sale. The sale of State of Oregon EDRBs is permitted under the following terms:

## ADMINISTRATIVE RULES

(a) Public Offerings. A public offering of EDRBs must meet the requirements of both paragraphs (A) and (B) of this subsection:

(A) An applicant for publicly offered bond financing must receive specific approval from OST. The proposed bond issuance must receive an investment grade rating from a nationally recognized rating agency (Moody's Investors Service, Fitch Ratings or Standard and Poor's Corporation) or receive an equivalent rating through the use of credit enhancement. The investment grade rating requirement may be waived by OST for applicants who are listed on the New York Stock Exchange (NYSE) or the National Association of Securities Dealers Exchange (NASDAQ).

(B) An official statement or disclosure document must be prepared and available for bond purchasers. The cover page must illustrate the rating.

(b) Limited Public Offerings.

(A) An applicant for a limited publicly offered bond financing must receive specific approval from OST and demonstrate compliance with the publicly offered requirements of Section 1(a)(A) above or the proposed offering shall be made only to an "Accredited Investor" (AI) as defined under Section 3(a)(2) of the Securities Act of 1933 or a "Qualified Institutional Buyer" (QIB) as defined under Rule 144A of the Securities Act of 1933 or a "Sophisticated Investor" (SI) as the term is defined in Rule 501 Regulation D under the Securities Act and further described in 17 CFR 230.506(b)(2)(ii) as one who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. The AI, QIB or SI must agree in writing that the securities are being acquired for investment and are intended to be held for its own account and not with a view to, or for resale in connection with, and distribution or transfer of the bonds, except to another AI, QIB or SI who must enter into a similar written agreement;

(B) An official statement or disclosure document must be made available for bond purchasers. The cover page must illustrate the rating or contain a statement similar to the following: "These securities are to be sold only to "Accredited Investors" as defined under sec. 3(a)(2) of the Securities Act of 1933, or a "Qualified Institutional Buyer" as defined under Rule 144A of the Securities Act of 1933, or a "Sophisticated Investor" as the term is defined in Rule 501 Regulation D under the Securities Act and further described in 17 CFR 230.506(b)(2)(ii) as one who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment".

(c) Private Placements. An applicant for a privately placed bond financing must receive specific approval from OST. The proposed offering must be made only to an AI, QIB or SI. The AI, QIB or SI must agree in writing that the securities are being acquired for investment and are intended to be held for its own account and not with a view to, or for resale in connection with, and distribution or transfer of the bonds, except to another AI, QIB or SI who must enter into a similar written agreement;

(2) Applications Submitted to the OST.

(a) Applications and any additional information or requested supporting materials must be submitted to OST at a minimum, seven business days prior to the Oregon Economic and Community Development Commission's ("Commission") meeting at which a proposal is expected to be considered for financing eligibility;

(b) OST will endeavor to give either preliminary approval or disapproval at not later than seven business days after the Commission meeting that approves financing eligibility. Preliminary approval will be based on the nature of the direct economic benefit expected to be produced by the project and in compliance with Oregon Revised Statutes and this rule;

(c) OST's review for final approval, as represented by the Certificate of Determination, encompasses:

(A) The bond market for the types of bonds proposed for issuance;

(B) The terms and conditions of the proposed issue; and

(C) Such other relevant factors as OST considers necessary to protect the financial integrity of the State.

(D) Evidence of the project's final approval by the Commission.

(d) Notice of final approval or disapproval will be provided within ten business days of the meeting at which the Commission grants final approval.

(3) Appointment of Bond Counsel for EDRB Issues. The State must be represented by its own bond counsel appointed under ORS 285B.344 and 286A.130 for all EDRB issues. The applicant will be responsible for all fees and expenses of bond counsel and must retain other counsel, if representation is desired, to represent the applicant in connection with the EDRB issuance. If an applicant wishes to use a particular firm as bond counsel that, at the time, is not under contract with the Oregon Economic and

Community Development Department or OST, it may request that the department or OST contract with such firm. The bond counsel engaged by OST or the department must meet the following requirements;

(a) The law firm must be listed in the most current issue of the Bond Buyer's Directory of Municipal Bond Attorneys (the "Red Book");

(b) The law firm must have an established residence within the state of Oregon.

(c) The law firm must agree and represent to OST and the department that:

(A) It understands it has been engaged as counsel to the State of Oregon, who is its client,

(B) That the firm will represent solely the interests of the State of Oregon in connection with the EDRB issuance and

(C) And that the firm has all licenses, permits or authorizations necessary to perform such work for the State of Oregon;

(d) OST is satisfied that the individual(s) performing the work, from the standpoint of experience, work and previous opinions issued, can responsibly represent the interests of the State of Oregon.

(e) The firm has particular knowledge or experience with respect to the applicant, the business activities of the applicant or the purpose for which moneys derived from the sale of the EDRBs will be used.

(4) MDAC Form. The Oregon Economic and Community Development Department shall submit to OST a completed MDAC Form 2 within five days of the closing of the transaction.

(5) Exceptions. OST, upon showing sufficient cause, may waive any or all of the provisions of this rule.

Stat. Auth.: ORS 285B.344, 286A.005, 286A.130

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: TD 1-1988(Temp), f. 2-17-88, cert. ef. 2-18-88; TD 2-1988, f. & cert. ef. 4-8-88; OST 3-2006, f. & cert. ef. 8-4-06; OST 7-2008, f. & cert. ef. 12-29-08

### 170-061-0200

#### Election to Issue Bonds Under Laws Prior to 2008 ("Prior Laws")

(1) Election For State Agencies. A state agency may request that the State Treasurer elect to issue bonds on behalf of the agency under the Prior Laws, without regard to Chapter 783 Oregon Laws 2007, by submitting a written request for the election to OST on or before the date that is forty-five (45) days before the scheduled sale date for the bonds. The ability to elect Prior Laws for bond issuance provided for in this administrative rule expires January 2, 2010.

(2) Demonstrate Need. The request shall demonstrate the need for the election by describing why the agency's bonds cannot or should not be issued under the provisions of Chapter 783, including a description of the problem, if any, in Chapter 783 that led to the agency's request. The State Treasurer may elect to issue bonds under the Prior Laws if the state agency demonstrates that:

(a) An approving opinion of bond counsel cannot be provided under Chapter 783 but may be provided under the Prior Laws;

(b) The agency's bonds may be issued at a substantially lower cost under the Prior Laws than under Chapter 783;

(c) A credit enhancement or other financing mechanism that would substantially improve the overall financing structure of the bond sale may be used under the Prior Laws but not under Chapter 783; or

(d) Any other reason that would result in the agency's bonds being issued at a substantially lower cost or under a structure or terms that are substantially better for the agency or the State of Oregon if the bonds are issued under the Prior Laws rather than Chapter 783. An agency shall promptly provide such additional information or documentation as OST may request to assist OST in making a determination as to whether an election should be made. OST will determine whether to make the election on or before thirty (30) days after receipt of the request for an election from a state agency. If OST fails to make a determination within that time, the agency's request will be deemed to be denied.

(3) Public Body Election. A public body may elect in writing to issue bonds under the Prior Laws, without regard to Chapter 783 Oregon Laws 2007, on or before the date that is fifteen (15) days before the scheduled sale date for the bonds. The ability to elect Prior Laws for bond issuance provided for in this administrative rule expires January 2, 2010. The public body shall promptly provide the OST with a copy of the written election. The written election shall include a description of the problem, if any, in Chapter 783 that led to the public body's request and demonstrate the need for the election because the public body finds that one or more of the following circumstances exists:

(a) An approving opinion of bond counsel cannot be provided under Chapter 783 but may be provided under the Prior Laws;

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(b) The public body's bonds may be issued at a substantially lower cost under the Prior Laws than under Chapter 783;

(c) A credit enhancement or other financing mechanism that would substantially improve the overall financing structure of the bond sale may be used under the Prior Laws but not under Chapter 783; or

(d) Another reason or circumstance exists that would result in the public body's bonds being issued at a substantially lower cost, or under a structure or terms that are substantially better for the public body, if the bonds are issued under the Prior Laws rather than Chapter 783. When determining whether to make the election authorized under this rule, the public body shall confer with the OST. A public body shall promptly provide such additional information or documentation as the State Treasurer may request with respect to an election made under this rule.

Stat. Auth.: Ch. 783 OL 2007 (HB 3265)

Stats. Implemented:

Hist.: OST 3-2007, f. & cert. ef. 12-27-07; OST 7-2008, f. & cert. ef. 12-29-08

### 170-061-0300

#### Selection of Underwriters and Advisors by the State Treasurer

(1) Underwriters. OST may select underwriters for the State's bond programs either through a direct appointment and negotiated process with a single firm or with multiple firms or through the issuance of requests for proposals for a single firm or multiple firms. OST may determine to select one or more underwriters for each bond finance program operated by a state agency. Generally, underwriting firms will be selected to participate in a syndicate of underwriters for a bond finance program for a period not to exceed three years, unless at the discretion of OST circumstances exist to extend such period. If OST issues requests for proposals, such proposals shall be published on the website of the OST and sent to all firms on the Treasurer's Underwriter Bidders List. Any firm interested in receiving requests for proposals for underwriters must provide their name, address, e-mail, telephone number and names of contact individuals to the OST with a request to be added to the Underwriter Bidders List.

(2) Financial and other Advisors or Service Providers. OST may select financial advisors, bond counsel and other providers of services in connection with the State's bond programs either through a direct appointment and negotiated process with a single firm or with multiple firms or through the issuance of requests for proposals for a single firm or multiple firms. OST may determine to select one or more service providers for each bond finance program operated by a state agency.

Stat. Auth.: ORS 286A.005

Stats. Implemented: ORS 286A.025, 286A.130, 286A.132.

Hist.: OST 7-2008, f. & cert. ef. 12-29-08

### 170-061-0400

#### Lost, Stolen or Destroyed Bonds or Interest Coupons

(1) Payment Under Bondholder Agreement. A paying officer shall pay any lost, mutilated or stolen bond or interest coupon as provided in the indenture or other agreement with bond owners executed when the bond was issued. If not provided for in the original indenture or agreements, the procedures outlined in this rule shall apply.

(2) Payment of Matured Bond. A paying officer shall pay the principal of and interest on any bond at or after maturity if the asserted owner of the instrument:

(a) Submits an affidavit that describes the following items in sufficient detail for the paying officer to determine the accuracy and veracity of the statements in the affidavit and that the bond has not already been paid:

(A) The bond;

(B) The circumstances surrounding the acquisition of the bond(s); and

(C) The circumstances surrounding the bond's loss, mutilation or destruction;

(b) Surrenders the bond, if it is mutilated and in the possession of the asserted owner; and

(c) The asserted owner furnishes an indemnity instrument executed by a surety company licensed to do business in the state for the face amount of the bond plus interest due thereon.

(3) Affidavit. If the asserted owner does not have personal knowledge of the information that must be contained in the affidavit required under subsection (2)(a) of this section, the person having the personal knowledge may make the affidavit.

(4) Indemnity. If the face amount of a bond plus interest due thereon is \$1,000 or more, a surety company licensed to do business in the state of Oregon must execute the indemnity bond required under subsection (2) of this section.

(5) Issuance of Duplicate prior to Maturity. If a bond has not yet matured, the governing body shall execute and deliver a duplicate to the asserted owner of such bond when such asserted owner:

(a) Submits an affidavit that describes the following items in sufficient detail for the paying officer to determine the accuracy and veracity of the statements in the affidavit and that the bond has not already been paid:

(A) The bond;

(B) The circumstances surrounding the acquisition of the bond(s); and

(C) The circumstances surrounding the bond's loss, mutilation or destruction;

(b) Surrenders the Bond, if it is mutilated and in the possession of the asserted owner; and

(c) The asserted owner furnishes an indemnity instrument executed by a surety company licensed to do business in the state of Oregon for the face amount of the bond plus interest due and to become due on the bond; and

(d) Deposits with the issuer a sum sufficient to pay the expenses of issuing a duplicate bond.

(6) Affidavit. If the asserted owner does not have personal knowledge of the information that must be contained in the affidavit required under this rule, the person having such personal knowledge may make the affidavit.

(7) Waiver. If the asserted owner of a lost, mutilated or destroyed bond that was registered provides an affidavit, certification or other reliable proof that the paying officer or governing body reasonably finds protects the issuer from conflicting claims for payment under the registered bond, the paying officer may waive the requirements of this section with respect to that registered bond.

(8) Form of Duplicate. If the paying officer issues a duplicate bond, it shall be in the same form and amount and bear the same serial or CUSIP number, date of issue and date of maturity as the original bond. If the bond has interest coupons attached, only interest coupons that have not matured under the terms of the original bond as of the date the duplicate is issued shall be attached to the duplicate. The officer shall indorse the word "DUPLICATE" and the date its issuance upon the face of any duplicate bond and upon the face of any attached interest coupon. The paying officer shall sign the duplicate on behalf of the issuer.

(9) Waiver of Indemnity Instrument. The paying officer may waive the requirement of an indemnity instrument imposed by this rule if the asserted owner of the bond furnishes an undertaking for the face amount of the bond plus all interest due and to become due on the bond to protect the issuer from loss or liability resulting from any demand or payment of the principal of or interest on such bond and:

(a) The asserted owner surrenders a mutilated bond that is so complete that any missing portion thereof could not form the basis of a valid claim against the issuer; or

(b) The asserted owner of the bond is the State of Oregon in its individual or fiduciary capacity or a public body that is not in default on the payment of any of its outstanding obligations.

Stat. Auth.: ORS 286A.005

Stats. Implemented: ORS 286A.005

Hist.: OST 7-2008, f. & cert. ef. 12-29-08

### 170-062-0000

#### Procedure for Submission, Review and Approval of an Advance Refunding Plan

(1) Plan Contents and Filing. An Advance Refunding Plan for a public body (as defined in ORS 287A.001(13)) or a state agency consists of a:

(a) Request for approval for an advance refunding bond sale submitted to OST. The request should include the name, phone number, U.S. mailing and e-mail address for the public body or state agency and for their bond counsel, financial advisor, escrow verification agent, underwriter and trustee;

(b) Copy of the resolution, ordinance or other documents authorizing submission of the plan to the Office of the Oregon State Treasurer ("OST");

(c) Statement of the primary purpose of the advance refunding sale. Permissible purposes are:

(A) A present value savings. To effect a savings, discounted to present value;

(B) A favorable reorganization of debt. Bonds issued for a favorable reorganization of debt require submission of a detailed written analysis elaborating the financial, legal or other benefits of the reorganization to the public body or state agency. Valid reasons for a reorganization of debt may include, but are not limited to:

(i) Replacement of undesirable or overly restrictive bond covenants or terms, such as liquidity covenants and debt service coverage requirements or release of reserve requirements;

(ii) Restructuring of debt payments considered by the public body or state agency to be favorable to the financial health of the relevant jurisdiction or its taxpayers or ratepayers;



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(C) Fiscal distress. To pay or discharge all or any part of a bonded obligation or series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available.

(d) Description of the bonds to be refunded, including: date and premium, if any, when each is first callable; semi-annual debt service to final maturity for each issue; par amount originally issued, current amount outstanding, proposed amount and maturities to be refunded; the dated date; and the purpose for which the bonds were issued;

(e) Description of the advance refunding issue including the proposed: call date and premium, if any; semi-annual debt service to final maturity; present value of each semi-annual payment; par amount; dated date; sale and closing date; True Interest Cost as set forth in OAR 170-061-0000(l); and the federal arbitrage yield limit.

(f) A description of the escrow account, listing the type of securities to be used and the redemption date of the account;

(g) Preliminary Net Present Value Savings (NPVS): Present value savings is defined as the present value of the difference in debt service between the proposed refunded debt service and the proposed refunding debt service, discounted at the arbitrage yield of the refunding debt service. Any issuance expenses paid from sources other than bond proceeds and any other cash contributed to the escrow other than from bond proceeds must also be subtracted from proceeds to determine NPVS.

(h) Itemization of all administrative costs, expenses or fees associated with the refunding. OST will determine if the fees are comparable to similar offerings and if excessive, approval may be withheld;

(i) For a public body, a copy of the contract with their financial advisor;

(j) Completed MDAC Form 1;

(k) Final Official Statement, if the bonds have been publicly offered;

(l) Final Net Present Value Savings as described in subsection (g) of this section;

(m) Copy of the arbitrage or tax certificate for the refunding;

(n) Copy of bond counsel's approving legal opinion;

(o) Copy of the escrow verification report demonstrating the ability of the escrow account to meet all future debt service and related costs relative to the refunded bonds;

(p) Copy of the Escrow Deposit Agreement;

(q) Copy of the underwriting or bond purchase agreement, if sold on a negotiated basis;

(r) Copy of the letter from the financial advisor to the public body or state agency as described in section (2) of this rule;

(s) Completed MDAC Form 2; and

(t) Completed MDAC Form 3, if using a synthetic fixed rate refunding issue.

(2) Financial advisor required. A public body or state agency must employ a financial advisor whose function is to advocate the interest of and advise them on the refinancing transaction. Prior to closing, the public body or state agency must receive from the financial advisor a letter stating that the advisor has reviewed the assumptions included in the plan and that the plan is consistent with this rule. The letter must include a recommendation on the desirability or undesirability of doing the advance refunding and the reasons therefor. The contract with the financial advisor must reflect the obligations of the parties in the event the sale is not consummated as planned.

(3) Significant Savings Tests. Equating or surpassing any one of the following tests indicates that the present value savings purpose, as required by subsection (1)(c)(A) of this rule, has been met:

(a) Present value savings of \$5 million or more; or

(b) A minimum savings ratio of 3.0 percent for a fixed rate refunding issue or a minimum savings ratio of 5.0 percent for a synthetic fixed rate refunding issue or other interest rate exchange agreement in conjunction with the refunding issue. If using an interest rate exchange agreement to synthetically fix a variable rate issue, the agreement must be for the maturity of the variable rate issue. The savings ratio is the net total present value savings divided by the proceeds of the refunding bonds, expressed as a percent.

(4) OST Approval Procedure.

(a) Preliminary Approval. Items in subsections (1)(a) through (1)(j) of this rule are initial components of an advance refunding plan and are required for preliminary approval. If approved, the OST will notify the public body or state agency of OST's preliminary approval and state its intention to issue a final approval conditional upon receipt and approval of items in subsections (1)(k) through (1)(t) of this rule;

(b) Preliminary advance refunding plans should be submitted to OST sufficiently in advance to allow 10 working days for review. The 10-day review period begins the working day after all items (1)(a) through (1)(j) of this rule and the application fee identified in OAR 170-061-0015 have been received;

(c) Preliminary approval is valid for a period of six months from the date of the preliminary approval letter. After the six month period expires a new application fee and advance refunding plan are required.

(c) Final Approval. Items in subsections (1)(k) through (1)(t) of this rule are the final components of an advance refunding plan and must be received at least five working days prior to final approval. The five-day period begins after receipt of all items required for final approval.

(d) At the discretion of OST, drafts of preliminary and final components of advance refunding plans may be acceptable with the understanding that finalized documents will be provided within five working days of the bond closing.

(5) Administrative Expenses.

(a) To reimburse OST for the services, duties and activities of OST in connection with reviewing proposals, a fee and other expenses will be charged to state agencies and public bodies as identified in OAR 170-061-0015.

(6) Ongoing Evaluation. OST evaluates the statewide impact of advance refunding. Adverse trends associated with advance refunding bond sales may result in a review and revision of the savings tests, thereby diminishing any undesirable impact upon the higher priority "new money" bond issues.

(7) Waiver of Certain Provisions. OST may waive certain provisions of this rule to accommodate unusual circumstances.

(8) Noncompliance. If OST finds that an advance refunding plan is not in substantial compliance with ORS 287A.370 and this rule, the plan may not be approved. Notice that the plan does not comply, and the reasons for this finding will be sent to the public body or state agency and its bond counsel within 30 business days after receipt of the plan.

(9) Address. Submit Advance Refunding Plans as provided in OAR 170-055-0001(4).

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

Stat. Auth.: ORS 287A.365

Stats. Implemented: ORS 287A.360 - 287A.380

Hist.: TD 2-1986, f. & ef. 6-16-86; TD 2-1990, f. 9-18-90, cert. ef. 9-19-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 5-2004, f. & cert. ef. 6-23-04; OST 2-2006, f. & cert. ef. 8-4-06; OST 7-2008, f. & cert. ef. 12-29-08

### 170-063-0000

#### Oregon School Bond Guaranty Program

(1) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "OST" means the Office of the State Treasurer.

(b) The "Act" means the Oregon School Bond Guaranty Act set forth in ORS 328.321 to 328.356.

(c) "Authorized District Official" means the chairperson of the board, the superintendent, president, or business administrator for the School District, or other designee of the board.

(d) "Certificate of Qualification" means a letter from OST pursuant to Section 4 of the Act.

(e) "Determination of Ineligibility" means a letter from OST pursuant to Section 5 of the Act.

(f) "Guaranty Program" means the school bond guaranty program established by the Act.

(g) "Nationally Recognized Bond Counsel Firm" means a bond counsel firm listed in the most recent publication of The Bond Buyer's Municipal Market Place.

(h) "Qualified Paying Agent" means a paying agent acceptable to OST who agrees to comply with the notification requirements of the Act and provides a letter to OST acknowledging as much.

(i) "School District" means a common or union high school district, an education service district, or a community college district.

(j) Terms not otherwise specifically defined herein shall have the meanings given in the Act.

(2) Request for Certificate of Qualification to Participate in Guaranty Program. School Districts may request a Certificate of Qualification at any time during the year by filing a Request for Certificate of Qualification. Such requests, however, must be submitted no less than three weeks prior to sale of the bonds for which the guaranty, if granted, will apply. Requests, and all other written communications pursuant to the Guaranty Program, shall be submitted to OST as provided in OAR 170-055-0001(4), and shall include:

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(a) The name, county, and district number (if applicable) of the requesting School District;

(b) The name of the business administrator or other contact person for the requesting School District;

(c) The mailing address, phone number, fax number, and e-mail address (if applicable) of the requesting School District;

(d) A statement of whether any of the School District's previously issued debt is covered by the Guaranty Program;

(e) A copy of the requesting School District's most recent audited financial statements;

(f) A listing of outstanding debt and associated debt service schedules, for debt issued by the School District since the date of its most recent financial audit;

(g) A certificate, signed by an Authorized District Official:

(A) Stating whether the requesting School District has ever failed to pay debt service on any of its bonds, certificates of participation, or other financial obligations when due, and explaining the circumstances and resolution of any such defaults or failures;

(B) Describing current lawsuits against the School District challenging the ability or authority of the School District to issue bonds or that may materially affect the ability of the School District to make scheduled debt service payments on its bonds when due;

(C) Stating that the requesting School District has filed its current budget document(s) with the Oregon Department of Education, and in accordance with Oregon Local Budget Law;

(D) Outlining the amount of debt the School District is authorized by law to incur, and stating that the requesting School District is within this limit; and

(E) Attesting to the accuracy and completeness of the materials provided.

(h) A non-refundable application processing fee as set forth in OAR 170-061-0015; and

(i) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program.

(3) Review of Request for Certificate of Qualification. Upon receipt of a request for a Certificate of Qualification, OST shall determine whether all items listed in section (2) of this rule have been provided, whether such items are current, and whether such items call into question the fiscal stability of the requesting School District. In determining the School District's eligibility under the Guaranty Program, OST may request additional information from the School District, as well as from any other person or entity that collects information pertaining to the financial well-being of the requesting School District.

(4) Issuance of Certificate of Qualification. Upon determining that a School District is eligible to participate in the Guaranty Program, OST shall issue a Certificate of Qualification to the School District. The Certificate of Qualification shall:

(a) Evidence the School District's immediate qualification for the Guaranty Program contingent upon compliance with section (5) and all other sections of this rule for each bond issue contemplated for guaranty under the Act;

(b) Be valid for one year from the date of its issuance;

(c) May be applied to any or all general obligation bonds or general obligation refunding bonds issued by the School District during such one-year period that comply with this rule and the Act. A bond shall be considered issued as of its dated date.

(5) School Districts to Provide Information Specific to Each Bond Issued Under the Program. A School District which has received a Certificate of Qualification may, while the Certificate of Qualification is in effect, obtain the state's guaranty of a series of its bonds under the Guaranty Program, by:

(a) Fully complying with Oregon Administrative Rule 170-61-0000 (Notice and Reporting Requirements by Public Bodies When Issuing Bonds), including providing notification on MDAC Form 1 to OST at least 10 days prior to the marketing of any bonds referencing participation in the Guaranty Program, for the bonds which will be guaranteed (this may be submitted simultaneously with information described in section (2) of this rule);

(b) Submitting the following documents to OST at least five business days prior to the closing of the bonds to which the guaranty will apply:

(A) A copy of a resolution adopted by the board or governing body of the School District, authorizing the School District to issue the bonds and participate in the Guaranty Program;

(B) An opinion from a Nationally Recognized Bond Counsel Firm that the bonds, when issued, will be general obligation bonds as defined in the Act, and will be valid and binding obligations of the issuer;

(C) A certificate stating that no litigation is pending or threatened against the School District, questioning the authority of the School District to issue the bonds or levy taxes to pay the bonds; and

(D) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program.

(6) Letter of Confirmation. Not later than the day on which the bonds are scheduled to close, OST shall, if the Certificate of Qualification is in effect and the School District has complied with Section 5(a) and 5(b) of this rule, issue a letter of confirmation identifying the series of bonds to which the guaranty shall apply, and stating that the guaranty shall apply to that series of bonds if the series of bonds closes within fifteen business days after the date of the letter, and there is filed with bond counsel a certificate, signed by an Authorized District Official and dated the date of the closing, stating that no litigation is pending or threatened against the School District which questions the authority of the District to issue the bonds or levy taxes to pay the bonds. If the series of bonds described in the letter of confirmation is closed within that fifteen day period, and the non-litigation certificate is filed with bond counsel as required by this Section, the series of bonds shall be guaranteed under the Guaranty Program, and the guarantee shall not be affected by any denial or revocation pursuant to Section 9 of this rule.

(7) Guaranty Fees. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee as set forth in OAR 170-061-0015.

(8) Ratings. OST will undertake to have the Oregon School Bond Guaranty Program rated by one or more of the major debt rating agencies. School Districts may contact the Debt Management Division of OST to determine which agencies have rated the program. School Districts proposing to issue bonds under the Guaranty Program may:

(a) Engage, at their own expense, one or more of the rating agencies to apply the rating of the Guaranty Program to their bonds; and

(b) At their discretion, and at their own expense, choose to obtain an underlying rating on the bonds.

(9) Denial or Revocation of Qualification/Determination of Ineligibility. OST may deny a School District's request for a Certificate of Qualification, or revoke a previously issued Certificate of Qualification, and issue a Determination of Ineligibility in accordance with the Act, if:

(a) The School District fails to meet the provisions outlined in the Act or any of the requirements outlined in this rule;

(b) The State has ever paid, pursuant to the Guaranty Program, any principal of or interest on any of the School District's bonds; or

(c) OST has reason to question the financial integrity of the School District.

(10) Guaranty Final Upon Issuance. Pursuant to ORS 328.336, issuance of a Determination of Ineligibility shall not affect the validity of the state's guaranty of any outstanding bonds issued under a letter of confirmation pursuant to Section (6) of this rule.

(11) Reference to Guaranty. School Districts with a valid Certificate of Qualification, and that have complied with section (5) and all other sections of this rule, shall evidence the State's guaranty of the School District's bonds by:

(a) Referencing the guaranty on the cover of the preliminary official statement(s) and official statement(s), or other offering document(s), for the applicable bond(s);

(b) Referencing the guaranty on the face of the School District's applicable bond(s); and

(c) Including language describing the guaranty (to be provided by OST) in the School District's preliminary official statement(s) and official statement(s), or any other offering document(s), for the applicable bond(s). Language supplied by OST must be used in its entirety and may not be modified or amended.

(12) School Districts to Report Changes Affecting Qualification. School Districts who have had bonds guaranteed under the Guaranty Program shall promptly notify OST if at any time there are material changes or occurrences that might affect the School District's eligibility to qualify or maintain its qualification to participate in the Guaranty Program, including but not limited to:

(a) Failure to adopt a resolution or ordinance that formally adopts the budget, sets appropriations, and if needed, levies property taxes in accordance with Oregon local budget law; and

(b) Failure to pay debt service on any outstanding bond, certificate of participation, or similar financial obligation.

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(13) Notice to OST. School Districts who are unable to transfer scheduled debt service payments to the paying agent 15 days prior to the payment date, and Qualified Paying Agents who have not received sufficient funds 10 days prior to the payment date, shall provide notice to OST as provided in OAR 170-055-0001(3) and by telephone to (503) 378-4930.

(14) Repayment. Respective School Districts are responsible for paying all of their obligations guaranteed by the State under the Guaranty Program. Any funds paid by the State on behalf of a School District under the Guaranty Program shall be recovered by OST in a manner consistent with the Act.

(15) Interest. OST will charge interest in connection with the recovery of funds under the Act. Any interest charged will be in a manner consistent with the Act.

(16) Penalty. In addition to charging interest, OST may impose a penalty on a School District for which the State made a payment under the Guaranty Program. Any penalty imposed will be consistent with the Act.

(17) Exceptions. OST may waive any or all provisions of this rule to the extent provided by law.

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

Stat. Auth.: ORS 328.331(2), 286A.014

Stats. Implemented: ORS 328.321 - 328.356

Hist.: OST 3-1998(Temp), f. 12-14-98, cert. ef. 1-2-99 thru 6-30-99; OST 2-1999, f. 6-22-99, cert. ef. 7-1-99; OST 1-2000(Temp) f. 10-31-00, cert. ef. 10-31-00 thru 4-27-01, Administrative correction 6-7-01; OST 7-2008, f. & cert. ef. 12-29-08

### 170-071-0005

#### Allocation of Private Activity Bond Limit

(1) Definitions.

(a) "CAP" means the state's private activity bond volume limit.

(b) "OST" means the Office of the State Treasurer.

(c) "Committee" means the Private Activity Bond Committee established pursuant to ORS 286a.615.

(d) "Issuer" has that meaning given to it by ORS 286A.605.

(e) "Private Activity Bonds" has the meaning given in Section 141 of the Internal Revenue Code of 1986.

(2) Meetings of the Committee. Committee meetings will be held as necessary, and on dates determined by the Committee to be consistent with the efficient allocation of the CAP, with public notice given as required by law. Committee meetings are open to the general public and may be held in any location permitted under the public meetings law, ORS 192.610 to 192.690, where the Committee deems appropriate. The Committee reserves the right to change its meeting schedule as allowed by the Oregon Public Meetings Law.

(3) Allocation Requests. Applications for current year CAP must be submitted no earlier than 30 days prior to the year for which the allocation is requested. Requests must be received no later than 10 business days before the scheduled meeting of the Committee at which the request is to be considered. Private activity bond issuers not specifically granted CAP by the legislature must submit requests for CAP to the Committee. Issuers who have been granted a CAP allocation by the legislature may also apply to the Committee for additional CAP. Each applicant for CAP must submit with its application a fee in the amount set forth in OAR 170-061-0015. CAP requests may be made for a specific project or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. CAP requests and all communications must be sent to the Committee through the OST as provided in OAR 170-055-0001(4) and include:

(a) The name of the governmental bond issuer,

(b) The title of the obligation to be issued,

(c) The principal amount of the obligation,

(d) The amount of the allocation request,

(e) The date of any purchase commitment if such commitment has been made,

(f) The name and address of the original purchaser(s) of the obligation if such purchase has been made;

(g) The name, address and telephone number of the principal user(s) of the proceeds from the issue;

(h) The anticipated sale date of the issue;

(i) The anticipated closing date of the issue;

(j) The name, address and phone number of bond counsel;

(k) The section and paragraph of the Internal Revenue Code, as identified by bond counsel, under which the bonds are deemed private activity bonds;

(l) How the project or activity for which an allocation is requested meets statutory standards;

(m) The expected number of jobs created or saved as a result of the allocation;

(n) The expected number of housing units to be constructed or renovated as a result of the allocation, (describe how the affordability requirements of the Internal Revenue Code and your local requirements, if applicable, are to be met); and

(o) Any additional material, as required by the Committee, in support of the requested allocation.

(4) Allocation Standards. The purpose of private activity bonding in this state is to maximize the economic benefits of such bonding to the citizens of this state. To this end, the Committee shall make allocations that are expected to further economic development, housing, education, redevelopment, public works, energy, waste management, transportation and other activities that the Committee determines will benefit the citizens of the state. The Committee, in determining whether an allocation is made to a project or class of projects or activities, will consider criteria including but not limited to the following:

(a) Support projects that increase the number of family wage jobs in Oregon,

(b) Promote economic recovery in small cities heavily dependent on a single industry,

(c) Emphasize development in underdeveloped rural areas of this state,

(d) Utilize educational resources available at institutions of higher education,

(e) Support development of the state's small businesses, especially businesses owned by women and members of minority groups,

(f) Encourage use of Oregon's human and natural resources in endeavors, which harness Oregon's economic comparative advantages.

(5) Decision Factors. The Committee shall consider the following factors in reaching its allocation decision:

(a) The amount of CAP remaining within the Committee's allocation discretion and the total amount of unused CAP remaining at the time the request is received;

(b) The amount of allocation requested;

(c) Whether the project(s) or activities promote one of the standards listed in section (4) of this rule; and

(d) The type of bond issuer making the request.

(6) Allocation Methods.

(a) The Committee may grant more or less than the originally requested amount of CAP. Issuers must submit requests in the form and manner described in section (3) of this rule.

(b) At the Committee's discretion, a portion of their CAP may be reserved for the last six months of the calendar year.

(7) Committee Decision Final. Issuers have the right to submit additional information, germane to their request, to the Committee at its meeting described in section (6) of this rule. Action of the Committee is final, however, if a CAP request is denied, a new application may be re-submitted through the procedures outlined in this rule.

(8) Bond Closing Fee and Post-Allocation Report. Issuers to whom current CAP allocations have been made under this rule must submit to the Committee, within 150 days after receiving such allocation or by December 15 of the current calendar year, whichever is earliest, a confirmation of bond closing. The Issuer shall pay the respective fees set forth in ORS 170-061-0015 to OST. In the event an issuer fails to file written confirmation of bond closing as required by this section, the CAP allocation shall automatically lapse. Bond closing confirmations must be delivered to the Committee as provided in OAR 170-055-0001(3) and includes:

(a) The name of the governmental bond issuer,

(b) The title of the obligation issued,

(c) The principal amount of the obligation issued and allocation used;

(d) The date of closing;

(e) The date of the bond allocation;

(f) The name and address of the individual submitting the bond closing confirmation; and

(g) Any additional material, which may be required by the Committee in support of the closing confirmation.

(9) Lapse or Extension of Allocation. Lapse of an allocation does not preclude the issuer from applying for a subsequent allocation for the same project. Subsequent allocation requests require a subsequent application fee as required by 170-061-0015(4). Issuers may, under compelling circumstances, request an extension of time to their initial 150-day period. Such requests must be filed with the Committee for approval or denial of the extension. Extension requests do not require subsequent application fees. All current year CAP allocations automatically lapse on December 15 of the calendar year for which the allocation is made, unless the issuer who



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has received the allocation files with the Committee a binding commitment to purchase and close the bond issue on or before December 31.

## (10) Carry Forward Allocations.

(a) The Committee, on behalf of the state's agencies, commissions, and governmental units, may elect to carry forward all unused CAP. To receive a carry forward CAP allocation, an issuer must file a carry forward request with the Committee not later than December 15 or earlier than September 30 of the current calendar year. The Committee will require information necessary for it to determine whether such carry forward request qualifies under the Internal Revenue Code and associated regulations. The Committee, not later than January 31 of the following year, shall make carry forward allocations to eligible issuers for specified purposes. Carry forward requests must include the information required in section (3) of this rule and be submitted with the application fee set forth in OAR 170-061-0015.

(b) An issuer receiving a carry forward allocation must forward to the Internal Revenue Service a document indicating the carry forward election made to that issuer by the Committee, in such manner and format prescribed by the Internal Revenue Service and any relevant state or federal regulations.

(c) It is the responsibility of the issuers to whom carry forward CAP is granted to file Form 8328 "Carry Forward Election of Unused Private Activity Bond Volume Cap" with the Internal Revenue Service Center, Ogden, UT 84201 on or before February 15 of the year in which the carry forward is granted, in order to validate the carry forward with the federal government. A signed copy of the issuer's filing with the Internal Revenue Service must also be sent to the Committee on or before February 15 of the year in which the carry forward CAP is granted.

(d) Use Report. Issuers to whom carry forward CAP is granted must submit to the Committee, within 30 days of closing, a confirmation of CAP use and bond closing information including:

- (A) The name of the governmental bond issuer;
- (B) The title of the obligation issued;
- (C) The principal amount of the obligation issued and allocation used;
- (D) The date of closing;
- (F) The date of the carry forward bond allocation;
- (G) The name and address of the individual submitting the bond closing confirmation; and

(H) Any additional material, which may be required by the Committee in support of the closing confirmation.

(e) Carry Forward Allocation Fees. The issuer shall pay the respective fees set forth in OAR 170-061-0015 to OST.

(11) Annual Needs Survey. The Committee during the final quarter of each calendar year will inquire of the private activity bond issuers of the state as to their anticipated private activity bond issuance and the need for private activity bond allocation in the ensuing year. To be taken into consideration by the Committee for future allocation, issuers should provide their information to the Committee on or before December 15 of the calendar year prior to the year for which private activity bond projections are made.

(12) Additional Allocation. The Committee may allocate amounts, subject to the standards set forth in subsection (4) of this rule, among issuers without a request for allocation from the issuer in the event additional bond limit becomes available, because of changes in federal law or otherwise, that has not been specifically allocated to an issuer by the Legislative Assembly.

(13) Exceptions. The Committee, at its discretion, may waive any or all provisions of this rule.

Stat. Auth.: ORS 286A.005, 286A.615

Stats. Implemented: ORS 286A.015, 286A.615

Hist.: TD 3-1986, f. & ef. 9-18-86; TD 3-1988(Temp), f. & cert. ef. 6-14-88; TD 4-1988, f. & cert. ef. 12-30-88; TD 2-1994, f. & cert. ef. 9-9-94; TD 2-1995, f. & cert. ef. 12-26-95; TD 1-1997, f. & cert. ef. 7-23-97; OST 1-2001, f. 7-23-01, cert. ef. 8-1-01; OST 4-2006, f. & cert. ef. 10-25-06; OST 2-2007(Temp), f. & cert. ef. 11-20-07 thru 4-15-08; Administrative correction 4-22-08; OST 3-2008(Temp), f. & cert. ef. 7-9-08 thru 1-4-09; OST 4-2008, f. & cert. ef. 8-28-08; OST 7-2008, f. & cert. ef. 12-29-08

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## Oregon Wine Board Chapter 619

**Rule Caption:** Rules Governing the Oregon Certified Sustainable Wine Program.

**Adm. Order No.:** OWB 1-2008

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 12-17-08

**Notice Publication Date:** 10-1-2008

**Rules Adopted:** 619-005-0010, 619-005-0020, 619-005-0030, 619-005-0040, 619-005-0050, 619-005-0060

**Subject:** The Oregon Wine Board is creating a certification program to promote the widespread certified sustainability practices in Oregon's wine industry. The rules govern the implementation of Oregon Certified Sustainable Wine certification program.

**Rules Coordinator:** Tara Anderson—(503) 228-8336

## 619-005-0010

### Definitions

(1) As used in OAR chapter 619, division 005, "bottling-lot" is the entire quantity of a homogeneous wine that is to be bottled using labels that are identical in content, except for indication of bottle size.

(2) "Applicant" is the owner of the bottling-lot brand name.

(3) "Qualifying Programs" are Low Input Viticulture and Enology (LIVE), Food Alliance, National Organic Program and its certifying agencies (e.g. Oregon Tilth, Stellar Certification Services, and others), Demeter Biodynamic®.

(4) "Vintage Year" is the year in which a particular wine's grapes were harvested.

Stat. Auth.: ORS 576.766(1)

Stats. Implemented: ORS 576.756, 576.579, 182.466

Hist.: OWB 1-2008, f. & cert. ef. 12-17-08

## 619-005-0020

### Certification

A bottling-lot of wine qualifies for certification in the Oregon Certified Sustainable Wine program if:

(1) The wine in that bottling-lot contains at least 97% fruit certified by one or more of the Qualifying Programs; and

(2) Bottling-lots must be produced in:

(a) Facilities certified by one or more of the Qualifying Programs; or

(B) Must have their winemaking process certified by one or more of the Qualifying Programs; and

(c) Beginning on January 1, 2011, 97% of the fruit is certified by Salmon-Safe in addition to one of the Qualifying Programs; and

(d) 100% of grapes, in a bottling-lot, must be grown in Oregon and bottled into wine either in Oregon or in a cross-state American Viticultural Area (AVA) that includes Oregon. A list of approved AVAs and which states they are located in can be found at [http://www.ttb.gov/appellation/us\\_by\\_ava.pdf](http://www.ttb.gov/appellation/us_by_ava.pdf) or from the Oregon Wine Board.

Stat. Auth.: ORS 576.766(1)

Stats. Implemented: ORS 576.756, 576.579, 182.466

Hist.: OWB 1-2008, f. & cert. ef. 12-17-08

## 619-005-0030

### Certification Process

(1) To obtain certification for one or more bottling-lot(s), an applicant must submit to the Oregon Wine Board using the online OCSW interface or by using forms available at [http://oregonwine.org/Industry/Oregon\\_Wine\\_Board/Education/OCSW/](http://oregonwine.org/Industry/Oregon_Wine_Board/Education/OCSW/):

(a) An Oregon Certified Sustainable Wine Facility Application (resubmitted or updated online annually); and

(b) For each bottling-lot for which certification is requested, an Oregon Certified Sustainable Wine Bottling-Lot Application including all supporting documents.

(2) Upon receipt of completed applications, the Oregon Wine Board or its designee will review the application to determine if all requirements are met and, if approved, the applicant will be required to enter into an Oregon Certified Sustainable Wine Certification Agreement.

(3) Upon execution of the Oregon Certified Sustainable Wine Certification Agreement, the Oregon Wine Board or its designee will provide to the applicant with Oregon Certified Sustainable Wine logo artwork files and the Oregon Certified Sustainable Wine Style Guide.

Stat. Auth.: ORS 576.766(1)

Stats. Implemented: ORS 576.756, 576.579, 182.466

Hist.: OWB 1-2008, f. & cert. ef. 12-17-08

## 619-005-0040

### Fees

The Oregon Wine Board will charge a fee for use of the Oregon Certified Sustainable Wine certification mark, regardless of whether the certification mark is actually used. Fees vary by applicant's total number of certified bottles in a vintage year. Vintage years with fewer than 600,000 qualifying bottles will be charged \$.01 per bottle. Vintage years with over 600,000 qualifying bottles will be charged \$.01 for the first 600,000 bottles and \$.005 for every bottle thereafter. The inspection fee of \$250 will be

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charged upfront for the first audit. Subsequent audits will be invoiced after the fact. The fee schedule is found at [http://oregonwine.org/Industry/Oregon\\_Wine\\_Board/Education/OCSW/](http://oregonwine.org/Industry/Oregon_Wine_Board/Education/OCSW/)  
Stat. Auth.: ORS 576.766(1)  
Stats. Implemented: ORS 576.756, 576.579, 182.466  
Hist.: OWB 1-2008, f. & cert. ef. 12-17-08

## 619-005-0050

### Audits

Oregon Certified Sustainable Wine participants are subject to audit by the Oregon Wine Board, or its designee, for accuracy and legitimacy of claims, including without limitation by review of files, production lot numbers, and the status of certification of the winery and its suppliers by the Qualifying Programs listed in OAR 619-005-0010(3) and, after January 1, 2011, the program listed in OAR 619-005-0020(1)(c). Wineries found to be not in compliance with the certification program rules or certification documents listed in OAR 619-005-0030(2) are subject to revocation of certification and other actions outlined in the Oregon Certified Sustainable Wine Certification Manual, which is available from the Oregon Wine Board at [http://oregonwine.org/Industry/Oregon\\_Wine\\_Board/Education/OCSW/](http://oregonwine.org/Industry/Oregon_Wine_Board/Education/OCSW/)  
Stat. Auth.: ORS 576.766(1)  
Stats. Implemented: ORS 576.756, 576.579, 182.466  
Hist.: OWB 1-2008, f. & cert. ef. 12-17-08

## 619-005-0060

### Denial of Application for Certification

(1) Upon denial of an application submitted under OAR 619-005-0030(1), the applicant may submit a written request for review of the denial. The request for review will be considered by the Oregon Wine Board's Complaints and Appeals Committee. If the Complaints and Appeals committee does not review the denial, the Applicant will be provided notice of a right to a contested case hearing.

(2) The Complaints and Appeals Committee consists of the Oregon Wine Board's Board of Directors. The Complaints and Appeals process is detailed in the Oregon Certified Sustainable Wine Certification Manual, which is available from the Oregon Wine Board or at [http://oregonwine.org/Industry/Oregon\\_Wine\\_Board/Education/OCSW/](http://oregonwine.org/Industry/Oregon_Wine_Board/Education/OCSW/).

Stat. Auth.: ORS 576.766(1)  
Stats. Implemented: ORS 576.756, 576.579, 182.466  
Hist.: OWB 1-2008, f. & cert. ef. 12-17-08

## Parks and Recreation Department Chapter 736

**Rule Caption:** Amendment to OAR 76-018-0045 for adoption of the Jessie M. Honeyman Memorial State Park Master Plan.

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

**Filed with Sec. of State:** 1-15-2009

**Certified to be Effective:** 2-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 736-018-0045

**Subject:** ORS 390.180(1) authorizes the Director of the Oregon Parks and Recreation Department to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a new master plan for Jessie M. Honeyman Memorial State Park. Master Plans for state parks are adopted as administrative rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as an Oregon Administrative Rule.

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to the park. The plan was formulated through OPRD's mandated master planning process involving meetings with the general public, a advisory committee, recreation user groups, and affected state and federal agencies and local governments.

The agency held a public hearing and solicited public comments. The park master plan to be adopted through the rule amendment has no effect on small businesses. However, business have had the opportunities to be involved, through the public meetings, written opportunities, as other members of the public.

**Rules Coordinator:** Joyce Merritt—(503) 986-0756

## 736-018-0045

### Adopted State Park Master Plan Documents

(1) The following state park master plan documents have been adopted and incorporated by reference into this division:

(a) Fort Stevens State Park Master Plan, as amended in 2001;

(b) Cape Lookout State Park;

(c) Cape Kiwanda State Park, renamed as Cape Kiwanda State Natural Area;

(d) Nestucca Spit State Park, renamed as Robert Straub State Park;

(e) Jessie M. Honeyman Memorial State Park as amended in 2009;

(f) Columbia Gorge Management Unit Master Plan, including: Rocky Butte State Scenic Corridor, Lewis and Clark State Recreation Site, Dabney State Recreation Area, Portland Womens' Forum State Scenic Viewpoint, Crown Point State Scenic Corridor, Guy W. Talbot State Park, George W. Joseph State Natural Area, Rooster Rock State Park, Shepperd's Dell State Natural Area, Bridal Veil Falls State Scenic Viewpoint, Dalton Point State Recreation Site, Benson State Recreation Area, Ainsworth State Park, McLoughlin State Natural Area, John B. Yeon State Scenic Corridor, Bonneville State Scenic Corridor, Sheridan State Scenic Corridor, Lang Forest State Scenic Corridor, Lindsey Creek State Scenic Corridor, Starvation Creek State Park, Viento State Park, Wygant State Natural Area, Vinzenz Lausman Memorial State Natural Area, Seneca Fouts Memorial State Natural Area, Koberg Beach State Recreation Site, Memaloose State Park, and Mayer State Park;

(g) Molalla River State Park;

(h) Champoege State Park;

(i) Willamette Mission State Park;

(j) Cascadia State Park;

(k) Willamette River Middle Fork State Parks Master Plan, 2006, including: Elijah Bristow State Park; Jasper State Recreation Site; Pengra Access; Dexter State Recreation Site; Lowell State Recreation Site; and the parks that comprise the Fall Creek State Recreation Area, including Winberry Park, North Shore Park, Sky Camp, Cascara Campground, Fisherman's Point Group Camp, Free Meadow, Lakeside 1 and Lakeside 2;

(l) Cove Palisades State Park Master Plan, as amended in 2002;

(m) Silver Falls State Park Master Plan, as amended in 1999;

(n) Curry County State Parks Master Plan, including: Floras Lake State Park, renamed as Floras Lake State Natural Area; Cape Blanco State Park; Paradise Point Ocean Wayside, renamed as Paradise Point State Recreation Site; Port Orford Heads Wayside, renamed as Port Orford Heads State Park; Humbug Mountain State Park; Otter Point Wayside, renamed as Otter Point State Recreation Site; Cape Sebastian State Park, renamed as Cape Sebastian State Scenic Corridor; Otter Point Wayside; Port Orford Cedar Forest Wayside, renamed as Port Orford Cedar Forest State Scenic Corridor; and Buena Vista Ocean Wayside; Pistol River State Scenic Viewpoint; Samuel H. Boardman State Scenic Corridor; Harris Beach State Recreation Area; McVay State Recreation Site; Winchuck State Recreation Site; Crissey Field State Recreation Site; Alfred A. Loeb State Park;

(o) Hat Rock State Park Master Plan, renamed as Hat Rock State Recreation Area;

(p) Deschutes County State Parks, including: La Pine and Tumalo State Parks; Cline Falls, renamed as Cline Falls State Scenic Viewpoint; and Pilot Butte, renamed as Pilot Butte State Scenic Viewpoint;

(q) Sunset Bay District Parks, including: Umpqua Lighthouse State Park (this chapter was replaced by the Umpqua Lighthouse State Park Master Plan, 2004); William M. Tugman State Park; Yoakam Point State Park, renamed as Yoakum Point State Natural Site; Sunset Bay State Park; Shore Acres State Park; and Cape Arago State Park;

(r) Bullards Beach District Parks, including: Seven Devils State Wayside, renamed as Seven Devils State Recreation Site; Bullards Beach State Park; Bandon Ocean Wayside, renamed as Face Rock State Scenic Viewpoint; and Bandon State Park, renamed as Bandon State Natural Area;

(s) Tillamook County Coastal State Parks, including: Oswald West State Park; Nehalem Bay State Park; Cape Meares State Park, renamed as Cape Meares State Scenic Viewpoint; Neahkanie-Manzanita State Wayside, renamed as Neahkanie-Manzanita State Recreation Site; Manhattan Beach State Wayside, renamed as Manhattan Beach State Recreation Site; Rockaway Beach State Wayside, renamed as Rockaway Beach State Recreation Site; Twin Rocks State Wayside, renamed as Twin Rocks State Natural Site; Oceanside Beach State Wayside, renamed as Oceanside Beach State Recreation Site; and Neskowin Beach State Wayside, renamed as Neskowin Beach State Recreation Site;

(t) Beverly Beach District Parks South, including: Boiler Bay State Park, renamed as Boiler Bay State Scenic Viewpoint; Rocky Creek State Wayside, renamed as Rocky Creek State Scenic Viewpoint; Otter Crest

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State Wayside, renamed as Otter Crest State Scenic Viewpoint; Devil's Punchbowl State Park, renamed as Devil's Punchbowl State Natural Area; Beverly Beach State Park; Agate Beach State Wayside, renamed as Agate Beach State Recreation Site; and Ellmaker State Park, renamed as Ellmaker State Wayside;

(u) Smith Rock State Park;

(v) Collier District Parks, including: Booth State Wayside, renamed as Booth State Scenic Corridor; Chandler State Wayside; Collier Memorial State Park; Goose Lake State Recreation Area; Jackson F. Kimball State Park, renamed as Jackson F. Kimball State Recreation Site; and Klamath Falls-Lakeview Forest Wayside, renamed as Klamath Falls-Lakeview Forest State Scenic Corridor;

(w) Banks-Vernonia State Park, renamed as Banks-Vernonia State Trail;

(x) Sumpter Valley Dredge State Park, renamed as Sumpter Valley Dredge State Heritage Area;

(y) Illinois River Forks State Park;

(z) Wallowa County State Parks Master Plan, 2000;

(aa) L.L. "Stub" Stewart Memorial State Park Master Plan, 2005;

(bb) Master Plan for Clay Myers State Natural Area at Whalen Island, 2003;

(cc) South Beach State Park Master Plan, 2003;

(dd) Prineville Reservoir Resource Management Plan/Master Plan, 2003;

(ee) Detroit Lake State Park Master Plan, 2002;

(ff) Umpqua Lighthouse State Park Master Plan, 2004; and

(gg) Fort Yamhill State Heritage Area Master Plan, 2004;

(hh) Thompson's Mills State Heritage Site Master Plan, 2006.

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 725 Summer Street NE, Suite C, Salem OR 97301.

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

Stat. Auth.: ORS 390.180(1)(c)

Stats. Implemented: ORS 390.180(1)(c)

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98; PRD 4-1999, f. & cert. ef. 5-14-99; PRD 9-2000, f. 6-14-00, cert. ef. 7-1-00; PRD 1-2001, f. & cert. ef. 2-1-01; PRD 5-2001, f. & cert. ef. 6-29-01; PRD 6-2001, f. & cert. ef. 9-6-01; PRD 3-2002, f. & cert. ef. 3-22-02; PRD 2-2003, f. & cert. ef. 2-27-03; PRD 3-2003, f. & cert. ef. 2-27-03; PRD 5-2003, f. & cert. ef. 7-8-03; PRD 9-2003, f. & cert. ef. 10-13-03; PRD 11-2003, f. & cert. ef. 11-7-03; PRD 7-2004, f. & cert. ef. 5-14-04; PRD 9-2004, f. & cert. ef. 6-14-04; PRD 1-2005, f. & cert. ef. 2-4-05; PRD 3-2005, f. & cert. ef. 5-4-05; PRD 4-2006, f. 7-14-06, cert. ef. 7-14-06; PRD 5-2006, f. 9-15-06, cert. ef. 10-1-06; PRD 1-2009, f. 1-15-09, cert. ef. 2-1-09

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## Physical Therapist Licensing Board Chapter 848

**Rule Caption:** Definitions: Therapy Interventions, Screenings, Foreign Credentialing; Rule Clarifications: Reassessments Pain CE Requirements, Compliance, Aides Role.

**Adm. Order No.:** PTLB 2-2008

**Filed with Sec. of State:** 12-16-2008

**Certified to be Effective:** 1-2-09

**Notice Publication Date:** 10-1-2008

**Rules Adopted:** 848-010-0022, 848-035-0035, 848-040-0175

**Rules Amended:** 848-010-0015, 848-010-0020, 848-010-0026, 848-010-0044, 848-015-0030, 848-020-0030, 848-020-0060, 848-035-0020, 848-035-0020, 848-035-0040, 848-040-0100, 848-040-0117, 848-040-0145, 848-040-0160, 848-045-0020

**Subject:** Adopt rules that will define: CE Pain Management requirements for PTs; the endorsement process of Foreign Educated PTs working in the US; and PT Screenings. Amend rules to define or further clarify: the term physical therapy interventions; documentation requirements of a PT reassessment; requirement for PT to refer a direct access patient; qualifications of examination application candidates; historical exam passing score criterion used by the Board when considering endorsement licensure; grounds for refusal of a license applicant; supervision and use of Aides, prohibited acts for Aides; prohibited acts for PTAs; use of CE credits taken by PT/PTA students while still in PT programs, records retention for CE documentation; adding "Failure to comply with an Advisory Letter from the Board" to Grounds for Discipline.

**Rules Coordinator:** James Heider—(971) 673-0203

## 848-010-0015

### Examinations

(1) Examinations for licensing of physical therapists and of physical therapist assistants shall be provided by an examination service approved by the Board. The overall passing score shall be based on a formula using the criterion-referenced scoring system. An applicant may sit for the examination a maximum of three times in any jurisdiction within a 12-month period, measured from the date of the first examination. Prior to a fourth attempt, the applicant must take and complete a refresher course approved by the Board. Applicant may test two times in any jurisdiction following completion of the refresher course. If applicant fails to pass the examination within two attempts following completion of the refresher course, applicant can not be licensed in Oregon.

(2) All completed applications for examination, the non-refundable examination fee and other necessary forms must be approved by the Board prior to the scheduling of each examination in Oregon. For applicants taking the examination in another state or territory of the United States, or other Board approved location, and applying to Oregon for licensure by examination, all completed applications, the non-refundable fee and other necessary forms must be approved by the Board prior to licensure.

(3) Unless qualified for licensure by endorsement under OAR 848-010-0022, a foreign educated physical therapists must submit directly to the Board, prior to obtaining an application:

(a) A Credentials Evaluation Statement ("the Report") of professional education and training prepared by a Board-approved credentials evaluation agency. It is the applicant's responsibility to pay the expenses associated with the credentials evaluation.

(A) The Report must provide evidence and documentation that the applicant's education outside a state or territory of the United States is substantially equivalent to the education of a physical therapist who graduated from an accredited physical therapy education program approved by the Board pursuant to ORS 688.050(2).

(B) To determine substantial equivalency, the approved credentialing evaluation agency shall use the appropriate Course Work Tool ("CWT") adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist graduated from their physical therapy program.

(b) English Language Proficiency

(A) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(B) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE); or

(C) Verification that the applicant has achieved the following minimum scores for each category of the new internet based TOEFL (iBT) examination: writing, 24; speaking, 26; reading, 21; listening, 18; with an overall score of not less than 89.

(c) If applicant has taken a Board-approved national licensing examination prior to application for licensure in Oregon, a report of applicant's examination scores must be submitted to the Board directly from the Board-approved examination service.

(d) If applicant holds or has held a license in the country in which the applicant received their physical therapy education, the applicant must provide primary source verification of the license.

(e) For purposes of section (3) of this rule, the requirements and criteria considered for credentialing will be "as of" the date the most recent credentialing report was received by the Board from the Board-approved credentialing agency.

(4) The Examination must be given in the English language.

(5) No person shall be allowed to take the physical therapist examination or physical therapist assistant examination for licensure in Oregon until all academic requirements are completed.

(6) The examination will be administered at a location approved by the Board. Applicants taking the examination in Oregon must sit for the examination within 60 days from the date of the letter of authorization from the Board-approved examination service.

(7) Any applicant who has graduated from an approved school of physical therapy and passed a Board-approved examination or a Board-approved equivalent examination more than five years prior to application for licensure in the State of Oregon and who has not been actively licensed in any other state or territory of the United States for a five year period must demonstrate competence to practice physical therapy. If the applicant fails



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to demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.020, 688.040, 688.050, 688.055, 688.070, 688.090

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 6, f. 12-20-74, ef. 1-11-75; PT 10, f. & ef. 10-21-77; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990 (Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 2-1996, f. & cert. ef. 9-5-96; PT 1-1997, f. & cert. ef. 2-4-97; PTLB 4-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 1-2000, f. & cert. ef. 5-4-00; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-010-0020

### Endorsement of Out-of-State Physical Therapists and Physical Therapist Assistants

Physical therapists and physical therapist assistants not licensed in the State of Oregon may be licensed by endorsement if they comply with all of the following:

(1) File a completed application form and pay a non-refundable endorsement application fee.

(2) Are at least 18 years of age.

(3) Are graduates of an approved school for physical therapists or physical therapist assistants as provided in OAR 848-010-0010 and 848-010-0015(3).

(4) Are currently licensed in any other state or territory of the United States.

(5) Have passed the physical therapist or physical therapist assistant examination provided by a Board-approved examination service with the following minimum overall passing score:

(a) For applicants examined February 1, 1996 and thereafter, the minimum overall passing score shall be based on a formula using the criterion-referenced scoring system verified by a Board-approved examination service;

(b) For applicants examined from January 5, 1983 through January 31, 1996, the minimum overall passing score shall be based on a formula using the national average raw score minus two average standard errors of measurement as determined by the Board;

(c) For applicants examined from January 1, 1976 through January 4, 1983, the minimum overall passing score shall be 1.5 standard deviation below the national average raw score verified by a Board-approved examination service;

(d) For applicants examined from January 1, 1961 through December 31, 1975, the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination given by a Board-approved examination service;

(e) For applicants examined prior to January 1, 1961, the passing of an examination of the American Registry of Physical Therapists, or the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination of the American Registry of Physical Therapists.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 5, f. 12-20-74, ef. 1-11-75; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990(Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 3-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-010-0022

### Endorsement of Out-of-State Foreign Educated Physical Therapists

A foreign educated physical therapist not licensed in the State of Oregon may be licensed by endorsement if the applicant meets or fulfills the requirements of subsections (1), (2), (4) and (5) of OAR 848-010-0020 and the Board receives all of the following additional items:

(1) A certified copy of the Credentials Evaluation Statement ("the report") used by a physical therapy licensing authority of a state or territory of the United States to make the determination to issue a license in that state or territory. The report must indicate that the applicant's foreign physical therapy education was determined to be substantially equivalent to the education of a physical therapist who graduated from an accredited physical therapy program approved by the Oregon Board pursuant to ORS 688.050(2). The licensing authority of the state or territory must certify the report and must send it directly to the Oregon Board.

(2) Proof of completion of a minimum of 1000 hours of clinical practice each year in a state or territory of the United States for three of the last

ten years immediately prior to application. To meet this requirement, however, no more than five years can have elapsed since the applicant has had clinical practice in a state or territory of the United States. The applicant's current or prior employer(s) must send this proof directly to the Oregon Board.

(3) A written statement from the applicant's most recent employer stating that the applicant practiced safely and competently. The employer must send this proof directly to the Oregon Board.

(4) A foreign educated physical therapist who does not meet the requirements of this section may apply for licensure under OAR 848-010-0015(3).

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 668.160(6)(c)

Hist.: PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-010-0026

### Temporary Permits

(1) The Board may issue a temporary permit to practice as a physical therapist or physical therapist assistant for a period of 90 calendar days to an applicant who meets the requirements of this rule.

(a) A person who has completed a CAPTE accredited physical therapist or physical therapist assistant program in a state or territory of the United States and who is applying for the first time to take the licensing examination in Oregon shall:

(A) Submit a completed application for license by examination and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee; and

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(b) A person who holds a valid current license to practice in another state or territory of the United States shall:

(A) Provide written primary source verification of current licensure in another state or territory;

(B) Submit a completed application for license by endorsement and pay the required fee;

(C) Submit a completed application for a temporary permit and pay the required fee; and

(D) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(c) A person who is a foreign educated physical therapist who has graduated from a CAPTE accredited physical therapist program shall:

(A) Submit a completed application for license by examination or endorsement and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee;

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist program; and

(D) Submit proof of passing scores on the TOEFL, TSE and TWE tests or iBTTOEFL test. However, this requirement does not apply if the physical therapist program was taught in English and English is the national language of the country where the physical therapist program was taught.

(2) A person who holds a temporary permit must practice under supervision as provided in this rule.

(3) A person who holds a temporary permit issued under subsection (1)(a) or (1)(c) of this rule must practice under on-site supervision, which means that at all times a supervising therapist is in the same building and immediately available for consultation. Entries made in the patient record by a temporary permit holder must be authenticated by the permit holder and by a supervising therapist.

(4) A person who holds a temporary permit issued under subsection (1)(b) of this rule must practice under general supervision, which means that at all times a supervising therapist must be readily available for consultation, either in person or by telecommunication.

(5) As used in this rule, "supervising therapist" means a physical therapist if the permit holder is a physical therapist or a physical therapist assistant. "Supervising therapist" also means a physical therapist assistant if the permit holder is a physical therapist assistant. A physical therapist assistant may not supervise a physical therapist permit holder.

(6) If a physical therapist assistant is supervising a physical therapist assistant permit holder, a physical therapist must be readily available for consultation, either in person or by telecommunication, as provided in OAR 848-015-0020.

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(7) Within five (5) working days of beginning practice the permit holder must submit to the Board a completed "Temporary Permit Letter from Employer" form. The permit holder must notify the Board of any change in employment during the three month period by submitting a new "Temporary Permit Letter from Employer" within five (5) working days.

(8) A temporary permit issued under this rule shall terminate automatically by operation of law if the permit holder fails the Board-approved national licensing examination or the person's score on the Board-approved national licensing examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements. A permit holder must return the permit certificate to the Board immediately, by a method that provides delivery verification, upon notification that the permit has terminated.

(9) The Board may refuse to issue a temporary permit to an applicant or may revoke a permit after issuance on any of the grounds set out in OAR 848-010-0044 or 848-045-0020. A person whose permit is revoked must return the certificate to the Board immediately by a method that provides delivery verification.

(10) A permit holder whose permit has terminated or has been revoked is not eligible to apply for another permit.

(11) A person who has taken and failed the Board-approved national licensing examination is not eligible to apply for a temporary permit. A person who has failed and has not subsequently passed the national licensing examination in another state, or whose score on the examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements, is not eligible to apply for a temporary permit.

(12) In its discretion the Board may grant one 90 calendar day extension to a person who holds a temporary permit issued under (1)(b) of this rule.

(13) A person who holds a temporary permit issued under this rule is subject to all statutes and rules governing a licensee.

Stat. Auth.: ORS 688.110

Stats. Implemented: ORS 688.110

Hist.: PTLB 3-2000, f. & cert. ef. 12-21-00; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

### 848-010-0044

#### Grounds for Refusal to License an Applicant

After notice and opportunity for hearing as provided in ORS 688.145, the Board may refuse to license, or may limit or restrict the license of an applicant who:

(1) Is not a person of good moral character as provided in OAR 848-045-0020(2)(i);

(2) Willfully made a false statement on the application;

(3) Failed to disclose requested information or provided false or materially misleading information on the application or during the process of applying for a license or temporary permit;

(4) Has practiced physical therapy without a license or has purported to be a therapist in violation of ORS 688.020;

(5) Has a mental, emotional or physical condition which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(6) Has an addiction to or a dependency on alcohol, legend drugs or controlled substances which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(7) Has been disciplined or had an application for licensure refused by another Oregon state licensing board or out-of-state licensing board for an act which if committed in Oregon would be grounds for discipline under ORS 688.140 or OAR 848-045-0020;

(8) Has been convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2); or

(9) Has been convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2).

(10) Has attempted and failed the National Physical Therapy Examination a total of five (5) times including all attempts in any other state or territory of the United States.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.100

Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

### 848-015-0030

#### Prohibited Acts

(1) A physical therapist assistant shall not:

(a) Perform an initial evaluation.

(b) Perform the required reassessment provided in OAR 848-040-0155. However, a physical therapist assistant may participate with the physical therapist in gathering data to be included in the required reassessment of a patient for whom the assistant has been providing treatment.

(c) Independently make modifications to the plan of care or objective goals. However, an assistant may collaborate with the physical therapist in making modifications or changes to the plan of care or goals based on the assistant's treatment of that patient and the patient's condition, progress or response to the treatment.

(d) Independently make the decision to discharge a patient from therapy. However, a physical therapist assistant may make recommendations regarding discharge to the supervising physical therapist based on the assistant's treatment of the patient.

(e) Perform high velocity manipulation of the spine or peripheral joints.

(2) As provided in ORS 688.020(2), no person shall practice as a physical therapist assistant unless that person is licensed under ORS 688.090.

Stat. Auth.: ORS 688.160 & 688.055

Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080, 688.090

Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04; PTLB 5-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

### 848-020-0030

#### Supervision; Delegation of Supervision; Professional Responsibility of Supervisors and Supervisees

(1) The physical therapist shall supervise the physical therapist aide in each treatment task and each non-treatment, patient-related task assigned to the aide. The supervising physical therapist may delegate to a physical therapist assistant supervision of the aide.

(2) A physical therapist or physical therapist assistant shall not permit an aide to perform a treatment-related task or a non-treatment, patient-related task except under the supervision of a physical therapist or physical therapist assistant. A licensee shall not permit an aide to administer a task that is prohibited under OAR 848-020-0060, and shall not permit an aide to administer a non-prohibited procedure or modality to a patient unless a licensee has previously administered the entire specific procedure or modality to the patient.

(3) A physical therapist or physical therapist assistant may supervise a maximum total of two physical therapist aides, when the aides are performing treatment-related tasks. In addition, a physical therapist or physical therapist assistant may supervise additional aides who are not performing treatment related tasks.

(4) Use of an aide to perform tasks as allowed by this rule shall not constitute a violation of OAR 848-045-0020(2)(s).

(5) A physical therapist or physical therapist assistant is responsible for the competent performance of tasks assigned to an aide whom the physical therapist or physical therapist assistant is supervising as provided in OAR 848-020-0000(5).

(6) A physical therapist assistant is always also professionally responsible for all acts and omissions of each aide under the physical therapist assistant's supervision.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160 & 688.210

Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

### 848-020-0060

#### Prohibited Treatment-Related Tasks

A physical therapist or physical therapist assistant shall not permit an aide to perform any of the following treatment-related tasks:

(1) Administer iontophoresis. However, an aide who has been trained to do so may assist with iontophoresis by applying the medication to the electrode so long as a physical therapist or physical therapist assistant administers it to the patient.

(2) Administer phonophoresis. However, an aide may operate the sound head if the physical therapist or physical therapist assistant has applied the medication to the patient, determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(3) Administer electrotherapy. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the electrode placements, treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

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(4) Administer ultrasound. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(5) Administer mechanized or manual traction.

(6) Perform manual stretching with the goal of increasing range of motion, neuro-facilitation or cardiac therapeutic exercise.

(7) Perform soft tissue mobilization or massage (other than effleurage and petrissage). However, an aide who is separately licensed or registered under another Oregon statute to do so may perform these tasks if done under the direction and on-site supervision specified in OAR 848-020-0000(5)(a).

(8) Wound debridement.

(9) Administer tilt table or standing frame. However an aide may perform these tasks if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(10) Joint mobilization or manipulation.

(11) Determine or modify a plan of care.

(12) Initiate or administer a physical therapy intervention the first time that intervention is administered or provided to a patient. This prohibition means that a physical therapist or physical therapist assistant must provide or administer the entire specific intervention before delegating that task to an aide.

(13) Independently make entries in a patient record, except for objective information about the treatment provided by the aide. The aide shall authenticate the record entry as provided in OAR 848-040-0150(2). A physical therapist or physical therapist assistant may also dictate information to an aide for entry into a patient medical record, so long as the physical therapist or physical therapist assistant authenticates such entries.

(14) Instruct a patient or a patient's caregiver in the application of any treatment.

(15) Except as required to respond to an inquiry by the Board or other person authorized to receive the information, answer or discuss any questions regarding a patient's status or treatment with anyone other than the physical therapist or physical therapist assistant.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160 & 688.210

Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04; PTLB 6-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

### 848-035-0020

#### Required Hours and Period for Completion

(1) A licensed physical therapist is required within each certification period to complete 24 hours of continuing education relating to the delivery or provision of physical therapy services.

(2) A licensed physical therapist assistant is required within each certification period to complete 12 hours of continuing education relating to the delivery or provision of physical therapy services.

(3) Notwithstanding the provisions of subsection (1) of this rule, any person who is first issued an Oregon physical therapist license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to OAR 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(4) Notwithstanding the provisions of subsection (2) of this rule, any person who is first issued an Oregon physical therapist assistant license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to OAR 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist assistant license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period.

Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(5) Notwithstanding the provisions of subsection (1) of this rule, a physical therapist whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to OAR 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person whose lapsed physical therapist license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 24 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(6) Notwithstanding the provisions of subsection (2) of this rule, a physical therapist assistant whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person whose lapsed physical therapist assistant license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 12 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(7) Any licensee whose license lapses on April 1st of an even numbered year, regardless of the reason, and who subsequently renews the lapsed license during the first 12 months of a new certification period, shall provide documentation of completion of the continuing education requirements for the immediately prior certification period before the license will be renewed.

(8) For purposes of determining whether a licensee has satisfied the continuing education requirement under section (3), (4), (5) or (6) of this rule, the Licensing Board will accept all qualifying continuing education hours completed from the beginning date of the 24 month certification period in which the license was issued or renewed, regardless of the specific date the license was issued or renewed. For example, a person whose license is issued or renewed on June 15, 2009 will receive credit for all qualifying continuing education hours completed at any time during the certification period of April 1, 2008 to March 31, 2010. This includes continuing education taken by student physical therapists or student physical therapist assistants, outside their program requirements, while they are enrolled in a physical therapy program.

(9) The initial certification period for a licensee to complete the required hours shall be January 1, 2006, through and including March 31, 2008. Thereafter, each twenty-four month period for completion of the required hours shall be April 1st of the even numbered year through March 31st of the next even numbered year. For example, the second twenty-four month period will be from April 1, 2008, through March 31, 2010.

(10) Failure to complete the required continuing education by March 31st of an even-numbered year shall constitute a violation of this division 35.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 1-2008(Temp), f. & cert. ef. 2-19-08 thru 4-2-08; Administrative correction 4-23-08; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

### 848-035-0030

#### Course Requirements and Restrictions

(1) Courses which a licensee may take to satisfy the continuing education requirement include but are not limited to:

(a) Courses, seminars, and workshops sponsored or approved by an established and recognized medical or dental health-related organization or professional association recognized by the Board;

(b) Courses approved for continuing education by other states which require continuing education for physical therapists or physical therapist assistants;



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(c) Courses certified for continuing education units (CEU) by a recognized physical therapy professional association;

(d) Courses provided by an accredited institution of higher education other than courses taken as part of the curriculum requirements of a CAPTE accredited physical therapy program;

(e) Individual study courses requiring an examination and recognized by an accredited institution or recognized health-related organization or professional association recognized by the Board;

(f) Courses in cardiopulmonary resuscitation (CPR) however, continuing education credit will be limited to one hour, regardless of the length of the course;

(g) Courses or lectures which a licensee presents if the course or lecture presented awards continuing education units or hours to participants and the licensee requests continuing education credit from the Board;

(A) The licensee may receive continuing education units or hours equivalent to the actual credit hours awarded to participants for that portion of the program which the licensee presents;

(B) The maximum cumulative credit granted for presenting courses or lectures shall be no more than one half of the total continuing education requirement during any certification period (ie: 12 hours for physical therapists and 6 hours for physical therapist assistants) and;

(C) A licensee may receive credit for presenting a particular course or lecture only one time during any certification period, regardless of how many times the licensee presents that course or lecture; and

(h) Courses approved by the Board by special request.

(2) Activities which will not satisfy the continuing education requirement include:

(a) Orientation and in service programs;

(b) Professional association meetings for purposes of business or policy decisions making;

(c) Entertainment or recreational meetings;

(d) Attending meetings, holding office, or representing a professional association as a lobbyist or delegate;

(e) Publishing or preparing presentations.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-035-0035

### Pain Management Course Requirement for Physical Therapists

(1) Effective January 2, 2008, all Oregon licensed physical therapists must fulfill a one- time only pain management education requirement as defined in ORS 409.500.

(2) Physical therapists initially licensed on or before March 31, 2008 must complete the coursework requirement between January 1, 2006 and March 31, 2010.

(3) Physical therapists licensed on or after April 1, 2008 must complete the coursework requirement within a period of 24 months either before or after the first renewal of their physical therapist license.

(4) The requirement is seven hours of pain management education, including the completion of a one hour on-line pain management course sponsored and provided by the Oregon Pain Management Commission, plus an additional six hours of continuing education relative to the evaluation, diagnosis or treatment of pain.

(5) The seven hours of pain management education may be used to satisfy part of the physical therapist's continuing education requirement under OAR 848-035-0020 for the current period. However, pain management education hours taken in a prior certification period and used to satisfy the pain management requirement cannot be used to satisfy part of the continuing education requirement for the current certification period.

(6) Physical Therapist Assistants are exempt from the pain management education requirement.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-035-0040

### Documentation of Continuing Education Credits

(1) In order to qualify for credit against the required hours, a continuing education course must include a course completion certificate. The certificate must include the title of the course, the name of course provider or speaker, date of completion, number of hours and licensee's name.

(2) The licensee is responsible for obtaining a course completion certificate from the course provider. The licensee is further responsible for retaining the certificate in the event the Board requires the licensee to produce documentation of completion of the continuing education require-

ment. All completion certificates shall be retained for a minimum of four (4) years from the certificate date.

(3) The Board may require all or any percentage of physical therapists and physical therapist assistants who are renewing their licenses in the even numbered year to provide documentation of completion of the continuing education requirements of this division 35.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-040-0100

### Definitions

As used in this Division:

(1) "Authentication" means the process by which the licensee reviews and validates the accuracy of the record entry. By authenticating a record entry, the licensee certifies that the services described were performed by the authenticating licensee or performed by a person under that licensee's supervision.

(2) "IDEiA" means Individuals with Disabilities Education Improvement Act.

(3) "IEP" means an Individualized Education Plan developed for a child/student qualified under the IDEiA program.

(4) "IFSP" means an Individualized Family Services Plan developed for a child qualified under the IDEiA Early Intervention Program.

(5) "Licensee" means a physical therapist or a physical therapist assistant and includes a temporary permit holder.

(6) "Patient" means one who seeks and receives physical therapy services. For purposes of these rules, patient may include a person receiving services in a home or clinical setting, a student in a school setting, a child receiving early intervention services, a resident of a care facility, or an animal.

(7) "Permanent Record" means the final version of the record of each evaluation, reassessment or treatment provided to a patient which becomes part of the patient's medical record.

(8) "Physical therapy intervention" means a treatment or procedure and includes but is not limited to: therapeutic exercise; gait and locomotion training; neuromuscular reeducation; manual therapy techniques (including manual lymphatic drainage, manual traction, connective tissue and therapeutic massage, mobilization/manipulation of soft tissue or spinal or peripheral joints, and passive range of motion); functional training related to physical movement and mobility in self-care and home management (including activities of daily living (ADL) and instrumental activities of daily living (IADL)); functional training related to physical movement and mobility in work (job/school/play), community, and leisure integration or reintegration (including IADL, work hardening, and work conditioning); prescription, application, and, as appropriate, fabrication of devices and equipment (assistive, adaptive, orthotic, protective, or supportive); airway clearance techniques; integumentary repair and protective techniques; electrotherapeutic modalities; physical agents and mechanical modalities; and patient related instruction and education.

(9) "Plan of care" means a written course of physical therapy treatment established by a physical therapist following an initial evaluation which integrates the evaluation data collected to determine the degree to which physical therapy interventions are likely to achieve anticipated goals and expected outcomes.

(10) "Record" means a written account of the detailed information gathered from each evaluation, reassessment, and the treatment provided to a patient. This documentation may be used to create the separate, permanent record, or it may serve as the permanent record.

(11) "Student" means a child ages 3 to 21 who is enrolled in an educational institution and who qualifies for services under IDEiA or Section 504 of the Rehabilitation Act, or other designated plan of care, or a child ages 0-2 who qualifies under the IDEiA Early Intervention Program.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-040-0117

### Standards For Authorization To Provide Physical Therapy Services

As a result of legislative changes effective January 1, 2006, physical therapists are no longer required to meet additional educational requirements in order to evaluate and treat a patient without a referral. The various circumstances, conditions and limitations under which a physical therapist may now evaluate and treat a patient are as follows in subsections (1), (2), (3), (4) and (5) of this rule.

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(1) A physical therapist may initiate and provide physical therapy to a self-referred patient as follows:

(a) Treatment shall not continue past 60 days from the initial date of treatment unless the therapist receives a written or oral referral or authorization from a provider identified in ORS 688.132(1). As used in this rule, the term “authorization” includes a provider’s certification of the plan of care of a Medicare patient.

(b) If the therapist receives a referral or authorization after the initial 60 days, treatment may be provided in accordance with the referral or authorization. If the referral specifies or identifies specific physical therapy interventions, precautions or contraindications for therapy, physical therapy shall not be provided beyond those specifications or limitations without further authorization.

(c) As provided in ORS 688.132(2), a motor vehicle liability insurer is not required to pay personal injury protection benefits for physical therapy treatment provided to a self-referred patient.

(2) A physical therapist may initiate and provide physical therapy upon a written or oral referral or authorization from a provider identified in ORS 688.132(1) as follows:

(a) If the referral or authorization specifies or identifies specific physical therapy interventions, precautions, or contraindications for therapy, physical therapy shall not be provided beyond those specifications or limitations without further authorization.

(b) If a patient who is being treated pursuant to a referral or authorization requests treatment for a diagnosis or condition that is different and separate from the diagnosis or condition that is the subject of the referral, the physical therapist may initiate and provide treatment. In such case, the provisions of subsection (1)(a) of this rule shall apply.

(c) If a physical therapist receives a referral or authorization from a provider identified in ORS 688.132(1) at any time during the first 60 days of treatment, such referral or authorization shall satisfy the requirements of ORS 688.132(1)(b). If a referral or authorization specifies the number of treatments or a duration of treatment extending beyond 60 days, the physical therapist may treat the patient for that duration and may extend treatment for a reasonable period of time if necessary for the patient to receive all authorized treatments.

(3) A physical therapist may initiate physical therapy without a written or oral referral or authorization, and is not required to refer the patient after 60 days under ORS 688.132(1)(b), if the patient meets one of the following criteria:

(a) The individual is a child or a student eligible for special education, as defined by state or federal law, or eligible under Section 504 of the Federal Rehabilitation Act of 1973, and is being seen pursuant to the child’s or the student’s individual education plan, individual family service plan, 504 plan, or other designated plan of care;

(b) The individual is a student athlete at a public or private school, college or university and is seeking treatment in that role as athlete; or

(c) The individual is a resident of a long term care facility as defined in ORS 442.015, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or an intermediate care facility for mental retardation pursuant to federal regulations.

(4) A physical therapist may provide physical therapy treatment to an animal under a referral from a veterinarian licensed under ORS chapter 686. The referral must be in writing and specify the treatment or therapy to be provided pursuant to ORS 686.040(4). The standard of care and documentation for physical therapy care to an animal shall be as provided for veterinarians under ORS Chapter 686.

(5) Notwithstanding the provisions of this rule, and pursuant to ORS 656.250, a physical therapist shall not provide compensable services to injured workers governed by ORS Chapter 656 except as allowed by a governing managed care organization contract or as authorized by the worker’s attending physician.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010

Hist.: PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-040-0145

### Standards For Providing Treatment

(1) A licensee shall not permit an aide to administer a task that is prohibited under OAR 848-020-0060, and shall not permit an aide to administer a non-prohibited procedure or modality to a patient unless a licensee has previously administered that procedure or modality to the patient.

(2) A physical therapist or physical therapist assistant shall perform, or attempt to perform physical therapy interventions only with qualified education and experience in that intervention.

(3) Except as provided in OAR 848-015-0020(6), a physical therapist or physical therapist assistant shall not continue to provide treatment to a patient unless a reassessment has been performed when required by OAR 848-040-0155. However, a physical therapist assistant may provide treatment on the day a reassessment is required, so long as during that treatment day a physical therapist performs the required reassessment.

(4) A physical therapist or physical therapist assistant shall provide treatment in accordance with the provisions of OAR 848-040-0105.

(5) At all times there shall be a physical therapist supervising the treatment provided by a physical therapist assistant as provided in OAR 848-015-0020(2) or an aide as provided in 848-020-0000(5). “Supervising physical therapist” means either the last physical therapist to see the patient, or the physical therapist designated as in-charge of the patient on the day the patient is being treated.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010 & 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-040-0160

### Standards For The Documentation Of The Required Reassessment

(1) A physical therapist is required to perform and document the reassessment as required under OAR 848-040-0155.

(2) The permanent record of each reassessment shall include at a minimum:

(a) Subjective status of patient;

(b) Objective data from tests and measurements conducted;

(c) Functional status of patient;

(d) Interpretation of above data;

(e) Any change in the plan of care; and

(f) Any change in physical therapy goals (including patient goals).

(3) After a physical therapist performs a reassessment, a physical therapist assistant may prepare a summary of the patient’s physical therapy status based upon the physical therapist’s performance of the required reassessment.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010 & 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-040-0175

### Standards for Screening Services

(1) “Physical therapy screening” means the process of determining whether a person or animal would benefit from a physical therapy evaluation or referral to another health care professional.

(2) A physical therapist or physical therapist assistant may conduct or perform a physical therapy screening of a person who is not currently a physical therapy patient.

(3) A physical therapist or physical therapist assistant shall not delegate the performance of a physical therapy screening to an aide.

(4) A screening is not a physical therapy treatment or intervention and does not require or involve performance of an initial evaluation, preparation of a plan of care, or creation of a patient treatment record.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

## 848-045-0020

### Grounds for Discipline of a Licensee

(1) The Board may impose a sanction as provided in 848-045-0010(1) on a licensee for illegal, unethical or unprofessional conduct. As used in this rule, “licensee” includes a temporary permit holder.

(2) A licensee commits or engages in illegal, unethical or unprofessional conduct if the licensee:

(a) Fails to disclose requested information, conceals material facts or provides false or materially misleading information on an application or during the application process for a temporary permit, license or renewal, or willfully makes a false statement on an application;

(b) Is disciplined by another Oregon state licensing board or out-of-state licensing board for conduct which if committed in Oregon would be grounds for discipline under this rule;

(c) Is convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2);

(d) Is convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2);

(e) Commits gross negligence or multiple acts of negligence in practice. The Board may take into account relevant factors and practices, includ-

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ing but not limited to the standard of practice generally and currently followed and accepted by persons licensed to practice physical therapy in this state, the current teachings at accredited physical therapy schools and relevant technical reports published in recognized physical therapy journals in determining the definition of gross negligence;

(f) Practices physical therapy while under the influence of intoxicating liquors or under the influence of a controlled substance;

(g) Has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(h) Violates the provisions of ORS 688.010 to 688.220 or any administrative rule, or violates or fails to comply with any order of the Board;

(i) Engages in any act involving moral turpitude, including, but not limited to fraud, deceit, dishonesty, violence, or illegal activity undertaken for personal gain, subject to the provisions of ORS 670.280(3);

(j) Unnecessarily exposes a patient's body to the view of the therapist or other persons;

(k) Engages in a conversation with a patient that is not necessary for the provision of treatment and that is personally intrusive or otherwise inappropriate;

(L) Commits or engages in any act of sexual misconduct involving a patient, including but not limited to any acts or statements of a sexual nature that do not contribute to appropriate physical therapy treatment;

(m) Engages in any sexual conduct, including dating, with a patient, whether initiated by the patient or the licensee. For purposes of this subsection, "patient" includes any person who has not been discharged from that therapist's care;

(n) Obtains or attempts to obtain any fee by fraud or misrepresentation, or makes a false or fraudulent claim for health care payment as provided in ORS 165.690 to 165.694;

(o) Engages in exploitation of a patient, which includes but is not limited to the following:

(A) Failure to maintain an appropriate patient/therapist relationship;

(B) Obtaining or attempting to obtain compensation for physical therapy services that were not provided to the patient;

(C) Provides physical therapy services or participates in physical therapy services solely for reasons of personal or institutional financial gain;

(D) Provides physical therapy services under circumstances where there is no benefit to be obtained by the patient from such services;

(E) Accepting, soliciting or borrowing anything of more than nominal value from a patient or a member of the patient's family except for reasonable compensation for physical therapy services provided to the patient. Nominal value shall be determined in the context of the particular relationship and circumstances; or

(F) Influencing a patient or the patient's family to utilize, purchase or rent any equipment based on the direct or indirect financial interests of the licensee rather than on the therapeutic value to the patient. A licensee who owns or has a direct financial interest in an equipment or supply company must disclose the interest if the licensee sells or rents the equipment or recommends the purchase or rental of the equipment to the patient.

(p) Knowingly makes a false entry or false alteration in a patient record;

(q) Engages in deceptive consumer practices, including but not limited to:

(A) Using, disseminating or publishing any advertising matter, promotional literature, testimonial, claim or guarantee that is false, misleading or deceptive;

(B) Practicing under a false, misleading or deceptive name, impersonating another licensee or fraudulently using or permitting the use of a license number in any way;

(C) Making a representation as to the licensee's skill or the efficacy or value of a treatment that the licensee knows or should know is false or misleading; or

(D) Using the title "Doctor" or "Dr." with patients in a practice setting or on business cards, letterhead or professional advertisement or signage. A physical therapist who holds a doctoral degree in physical therapy may only use the initials "DPT" or the words "doctorate in physical therapy" after the physical therapist's name.

(r) Practices physical therapy with a lapsed license;

(s) Knowingly or with reason to know, employs, aids, abets or permits any unlicensed person or person with a lapsed license to practice physical therapy;

(t) Fails to report in writing to employer that licensee provided physical therapy services while unlicensed or with a lapsed license or fails to provide a copy to the Board of such report;

(u) Fails to cooperate with the Board, which includes but is not limited to the following:

(A) Failure to respond fully and truthfully to a question or request for information from the Board;

(B) Failure to provide information or documents to the Board within the time specified by the Board;

(C) Failure to appear and provide information at an interview requested by the Board;

(D) Failure to timely produce and temporarily surrender custody of an original patient record requested by the Board and which is in the possession or under the control of the licensee, or failure to produce all portions of the patient record requested;

(E) Deceiving or attempting to deceive the Board regarding any matter, including by altering or destroying any record or document; or

(F) Failure to comply with the terms, conditions and recommendations of a Confidential Advisory Letter as issued by the Board;

(v) Interferes with or uses threats or harassment to delay or obstruct any person in providing information or evidence to the Board in any matter, investigation, contested case proceeding or other legal action instituted by the Board;

(w) Discharges an employee based primarily on the employee's attempt to comply or aid in the compliance with Board rules;

(x) Fails to notify the Board of any conduct by another licensee which reasonably appears to be illegal, unethical, unprofessional under the licensing statutes or these administrative rules, aids or causes another person, directly or indirectly, to violate ORS 688.010 to 688.220 or rules of the Board; or

(y) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 848-005-0030.

Stat. Auth.: ORS 688.140, 688.160 & 688.210

Stats. Implemented: ORS 688.140, 688.145, 688.220 & 688.235

Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04; PTLB 9-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09

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### Psychiatric Security Review Board Chapter 859

**Rule Caption:** Amend existing Rules: OAR 859-040-0010 and OAR 859-040-0015.

**Adm. Order No.:** PSRB 1-2008(Temp)

**Filed with Sec. of State:** 12-17-2008

**Certified to be Effective:** 12-17-08 thru 6-2-09

**Notice Publication Date:**

**Rules Amended:** 859-040-0010, 859-040-0015

**Subject:** Amend existing rule: 859-040-0015. Amend existing rule OAR 859-040-0010 to adopt subsection 5.

**Rules Coordinator:** Evangelia King—(503) 229-5596

#### 859-040-0010

##### Quorum and Decisions

The presence of at least three members of the Board constitutes a quorum:

(1) Three concurring votes (affirmative or negative) are required to make a Board decision.

(2) When three members cannot agree on the decision, the hearing may be continued for no longer than 60 days and the tape of the hearing and the exhibits shall be reviewed by the remaining member(s) and a decision by the majority of the members shall be the finding and order of the Board.

(3) If the attorney for the person objects to the remaining member's or members' review as set forth in section (2) of this rule, the Board may reschedule the matter for a hearing before the entire Board.

(4) If an objection for good cause is made to a specific member of the Board sitting on the panel considering a specific case, that member shall withdraw and, if necessary, the hearing shall be postponed and rescheduled.

(5) If an objection for good cause is made to a specific staff member of the Board being present during the panel's deliberations in a specific case, and if the Board determines that good cause exists, that staff member shall not be present during deliberations in that case.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2008(Temp), f. & cert. ef. 12-17-08 thru 6-2-09



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859-040-0015

## Public Meetings Law

All meetings of the PSRB are open to the public in accordance with the Public Meetings Law; the deliberations of the Board are not open to the public. For the purposes of this rule, the term “public” does not include employees of the PSRB.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.387

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-2008(Temp), f. & cert. ef. 12-17-08 thru 6-2-09

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## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Amending OAR 860-024-0010 Regarding the Arc Flash Protection Rule in 2007 NESC.

**Adm. Order No.:** PUC 5-2008

**Filed with Sec. of State:** 12-29-2008

**Certified to be Effective:** 12-29-08

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 860-024-0010

**Subject:** This rule amendment allows a twelve-month delay of the January 1, 2009, effective date for the National Electrical Safety Code (NESC) Rule 410.A.3, commonly known as the “Arc Flash Protection Rule.” The consensus of the rulemaking participants who provided comment to the Commission was that the delay is necessary for proper implementation.

**Rules Coordinator:** Diane Davis—(503) 378-4372

860-024-0010

## Construction, Operation, and Maintenance of Electrical Supply and Communication Lines

(1) Except as provided in section (2), every operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the 2007 Edition of the National Electrical Safety Code approved June 16, 2006, by the American National Standards Institute.

(2) Rule 410.A.3 of the 2007 Edition of the National Electrical Safety Code will not become effective until January 1, 2010.

[Publications: Publications referenced are available for review from the Commission.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 173, f. & ef. 1-14-76 (Order No. 76-037); PUC 1-1978, f. 1-13-78, ef. 2-13-78 (Order No. 78-076); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 6-1990, f. & cert. ef. 5-25-90 (Order No. 90-833); PUC 11-1993, f. & cert. ef. 6-23-93 (Order No. 93-809); PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 9-2002, f. & cert. ef. 2-26-02; PUC 6-2007, f. & cert. ef. 5-14-07; PUC 5-2008, f. & cert. ef. 12-29-08

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## Water Resources Department Chapter 690

**Rule Caption:** Well constructor and landowner responsibility regarding water well construction, maintenance, alteration, conversion, and abandonment activities.

**Adm. Order No.:** WRD 3-2008

**Filed with Sec. of State:** 12-22-2008

**Certified to be Effective:** 1-2-09

**Notice Publication Date:** 9-1-2008

**Rules Adopted:** 690-205-0205, 690-215-0006, 690-215-0025, 690-215-0035, 690-220-0115, 690-240-0385

**Rules Amended:** 690-200-0050, 690-205-0200, 690-215-0005, 690-215-0030, 690-215-0040, 690-220-0030, 690-220-0040, 690-220-0050, 690-220-0070, 690-220-0080, 690-240-0010, 690-240-0035, 690-240-0375

**Rules Repealed:** 690-220-0060

**Subject:** The Water Resources Commission (Commission) adopted rules that establish and clarify the initial notice of water supply well construction (Start Card) for water supply and monitoring wells, clarify the responsibility for work performed and standards for materials used in water supply well alterations, and allow the use of unhydrated bentonite for well abandonment. In addition, the rules

establish standards for the type and placement of unhydrated bentonite used for well abandonment.

**Rules Coordinator:** Ruben Ochoa—(503) 986-0874

690-200-0050

## Definitions

The Water Resources Commission uses the definitions of the words listed below in the administration and enforcement of Oregon’s Ground Water Law and the Rules and Regulations for the Construction and Alteration of Wells. No other definitions of these same words apply:

(1) “Abandonment, Permanent” means to remove a well from service by completely filling it in such a manner that vertical movement of water within the well bore and within the annular space surrounding the well casing, is effectively and permanently prevented. If a portion of a well is to be abandoned in order to prevent commingling, waste, or loss of artesian pressure, the abandonment shall conform with the requirements of OAR chapter 690, division 220 for water supply wells. This term is synonymous with “decommission.”

(2) “Abandonment, Temporary” means to remove a drilling machine from a well site after completing or altering a well provided the well is not immediately put into service, or to remove a well from service with the intent of using it in the future.

(3) “Access Port” means a minimum 1/2-inch tapped hole and plug, a 1/2-inch capped pipe welded onto the casing in the upper portion of a water supply well, or a dedicated measuring tube to permit unobstructed entry to determine the water level in the well at any time.

(4) “Air Gap” means a complete physical break between the outlet end of the discharge pipe or other conduit and the discharged substance. The break shall be at least twice the inside diameter of the pipe or conduit. (Back-siphon prevention)

(5) “Airline” means a water level measuring device consisting of a pressure gauge attached to an airtight line or pipe of known length, within the water supply well bore, extending from land surface to below the pumping level. The device will allow the water level to be computed by measuring the stable air pressure remaining in the line after completely purging water from within the line.

(6) “Air/Vacuum Relief Valve” means a device to automatically relieve or break vacuum. (Back-siphon prevention)

(7) “Altering a Well” means the deepening, hydrofracturing, re-casing, perforating, re-perforating, installation of packers or seals, and any other material change in the design or construction of a well. Material changes include but are not limited to casing installation or modification including casing extensions, installation or modification of liner pipe, reaming or under reaming of the borehole, pitless unit installation or re-sealing except for re-sealing performed during pitless adapter installation.

(8) “Annular Space” means the space between the drillhole wall and the outer well casing.

(9) “Aquifer” means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature (see Figure 200-2).

(10) “Artesian Aquifer” means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface, the well is a flowing artesian well (see Figure 200-2).

(11) “Artesian Water Supply Well” means a water supply well in which ground water is under sufficient pressure to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian water supply well.

(12) “Automatic Low-Pressure Drain” means a self-activating device designed and constructed to intercept incidental leakage and drain that portion of an irrigation pipeline or any other method of conveyance whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down. (Back-siphon prevention)

(13) “Back-Siphon Prevention Device” means a safety device used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals in the opposite direction of that intended. (Back-siphon prevention)

(14) “Bored Well” means a well constructed with the use of earth augers turned either by hand or by power equipment.

(15) “Buried Slab Type Well” means a dug well in which well casing is used to case the upper hole. A slab, sealed with cement grout, is placed

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between the upper hole and lower drillhole, and the remainder of the annulus is filled with concrete.

(16) "Casing" means the outer tubing, pipe, or conduit, welded or thread coupled, and installed in the borehole during or after drilling to support the sides of the well and prevent caving. Casing can be used, in conjunction with proper seal placement, to shut off water, gas, or contaminated fluids from entering the hole, and to prevent waste of ground water.

(17) "Casing Seal" means the water tight seal established in the well bore between the well casing and the drillhole wall to prevent the inflow and movement of surface water or shallow ground water in the well annulus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(18) "Check Valve" means a certified device designed and constructed to close a water supply pipeline, chemical injection line, or other conduit in a chemigation system to prevent reverse flow in that line. (Back-siphon prevention)

(19) "Chemigation" means the method of applying agricultural chemicals and fertilizer through an irrigation system.

(20) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

(21) "Commission" means the Oregon Water Resources Commission.

(22) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(23) "Community Well" means a water supply well, whether publicly or privately owned, which serves or is intended to serve more than three connections for residences or other connections for the purpose of supplying water for drinking, culinary, or household uses.

(24) "Confined Animal Feeding or Holding Area" means the concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, swine, and dairy confinement areas, slaughterhouse or shipping terminal holding pens where the animal waste is allowed to build up on the ground. Pastures and areas adjacent to buildings where animals and animal waste is confined by a physical barrier such as concrete are exempt.

(25) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer (see Figure 200-2).

(26) "Consolidated Formation" means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, such materials as basalt, sandstone, shale, hard claystone, and granite.

(27) "Contamination" means an impairment of water quality by chemicals, radionuclides, biologic organisms or other extraneous matter whether or not it affects the potential or intended beneficial use of water.

(28) "Continuing Education" means that education required as a condition of licensure under ORS 537.747, to maintain the skills necessary for the protection of ground water, the health and general welfare of the citizens of Oregon and the competent practice of the construction, alteration, abandonment, conversion, and maintenance of water supply wells, monitoring wells, and geotechnical holes.

(29) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(30) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(31) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(32) "Converting" a well means changing the use of an existing well or hole not previously used to either withdraw or monitor water such that the well or hole can be used to either withdraw or monitor water.

(33) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(34) "Department" means the Oregon Water Resources Department.

(35) "Director" means the Director of the Department or the Director's authorized representatives.

(36) "Documentation of Completion" means written evidence or documentation demonstrating attendance and completion of a continuing education course, including but not limited to: a certificate of completion, diploma, transcript, certified class roster, or other documentation as approved by the Continuing Education Committee.

(37) "Domestic Well" means a water supply well used to serve no more than three residences for the purpose of supplying water for drinking, culinary, or household uses, and which is not used as a public water supply.

(38) "Drawdown" means the difference in vertical distance between the pumping level and the static water level in a well.

(39) "Drive Point Well" means a well constructed by driving into the ground a well-point fitted to the end of a pipe section or series of pipe sections.

(40) "Dug Well" means a well in which the excavation is made by the use of digging equipment such as backhoes, clam shell buckets, or sand buckets. (See Hand dug well)

(41) "Excavation" means a free-standing cavity with greater width than depth constructed in the earth's surface which has a primary purpose other than seeking water or water quality monitoring.

(42) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(43) "Filter Pack Well" means a well in which the area immediately surrounding the well screen or perforated pipe within the water-producing zone is filled with graded granular material.

(44) "Geologic Formation" means an igneous, sedimentary, or metamorphic material that is relatively homogeneous and is sufficiently recognized as to be distinguished from the adjacent material. The term is synonymous with "formation."

(45) "Geologist" means an individual registered by the State of Oregon to practice geology.

(46) "Geotechnical hole" means a hole constructed to collect or evaluate subsurface data or information, monitor movement of landslide features, or to stabilize or dewater landslide features. Geotechnical holes are not monitoring wells or water supply wells as defined below. Various classes and examples of geotechnical holes are listed in OAR 690-240-0035(6)-(9).

(47) "Grout" means approved cement, concrete, or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(48) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(49) "Hand dug well" means a well in which the excavation is only made by the use of picks, shovels, spades, or other similar hand operated implements. (See Dug Well)

(50) "Hazardous Materials Training" means training as defined by OAR 437-002-0100 Adoption by Reference Subdivision H Hazardous Materials 1910.120 Hazardous Waste Operations and Emergency Response.

(51) "Hazardous Waste" means a substance as defined by ORS 466.005.

(52) "Hazardous Waste Disposal Site" means a geographical site in which or upon which hazardous waste is disposed.

(53) "Hazardous Waste Storage Site" means the geographical site upon which hazardous waste is stored.

(54) "Hazardous Waste Treatment Site" means the geographical site upon which or a facility in which hazardous waste is treated.

(55) "Health Hazard" means a condition where there are sufficient concentrations of biological, chemical, or physical, including radiological, contaminants in the water that are likely to cause human illness, disorders, or disability. These include but are not limited to, naturally occurring substances, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes. Sufficient concentrations of a contaminant include but are not limited to contaminant levels set by the Oregon Department of Environmental Quality and Oregon Health Division.

(56) "Health Threat" means a condition where there is an impending health hazard. The threat may be posed by, but not limited to: a conduit for contamination, or a well affecting migration of a contaminant plume, or the use of contaminated water. A well in which the construction is not verified by a water supply well report or geophysical techniques may be considered a conduit for contamination in certain circumstances. Those circumstances include, but are not limited to: an unused and neglected well or a well for which no surface seal was required. A well in which the casing seal, sanitary seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(57) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(58) "Hydrofracturing" means the use of high pressure liquid, sand, packers or other material to open or widen fractures in consolidated formations for the purpose of increasing well yield.

(59) "Hydrologic Cycle" is the general pattern of water movement by evaporation from sea to atmosphere, by precipitation onto land, and by return to sea under influence of gravity.

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(60) "Impermeable Sealing Material" means cement, concrete, or bentonite which is used to fill the open annulus between the lower and upper sealing intervals.

(61) "Inspection Port" means an orifice or other viewing device from which the low-pressure drain and check valve may be observed.

(62) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(63) "Leakage" means movement of surface and/or subsurface water around the well casing or seal.

(64) "Liner Pipe" means the inner tubing, pipe, or conduit installed inside the well casing or lower well bore. The liner pipe is used to protect against caving formations and is not permanently affixed to the drillhole wall or casing.

(65) "Lower Drillhole" means that part of the well bore extending below the surface seal interval in a well.

(66) "Mineralized Water" means any naturally occurring ground water containing an amount of dissolved chemical constituents limiting the beneficial uses to which the water may be applied.

(67) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(68) "Monitoring Well Constructor" means any person who has a current water well constructor's license with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(69) "Monitoring Well Constructor's License" means a Water Well Constructor's License with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(70) "Municipal or Quasi-Municipal Well" means a water supply well owned by a municipality or nonprofit corporation that may be used as a community or public water supply.

(71) "Order" means any action satisfying the definition given in ORS Chapter 183 or any other action so designated in ORS 537.505 to 537.795.

(72) "Other Hole" means a hole other than a water supply well, a monitoring well, or geotechnical hole, however constructed, in naturally occurring or artificially emplaced earth materials, through which ground water can become contaminated. Holes constructed under ORS Chapters 517, 520, and 522 are not subject to these rules. Other holes are regulated under OAR 690-240. Examples of other holes are listed in 690-240-0030.

(73) "Perched Ground Water" means ground water held above the regional or main water table by a less permeable underlying earth or rock material (see Figure 200-2).

(74) "Permeability" means the ability of material to transmit fluid, usually described in units of gallons per day per square foot of cross-section area. It is related to the effectiveness with which pore spaces transmit fluids.

(75) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(76) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(77) "Piezometer" means a type of monitoring well designed solely to obtain ground water levels. Piezometers are prohibited in areas of known or reasonably suspected contamination. This term is synonymous with "observation well" (See OAR 690-240).

(78) "Pitless Adapter" means a commercially manufactured device designed for attachment to one or more openings through a well casing, which will permit water service pipes to pass through the wall of a well casing or extension thereof and prevent entrance of contaminants into the well or ground water. (Note: Unhydrated bentonite shall be installed at least one and one-half inches thick around the casing in any disturbed seal interval during pitless adapter installation).

(79) "Pitless Unit" means a commercially manufactured assembly which extends the upper end of the well casing to above grade, constructed and installed so as to prevent the entrance of contaminants into the well and to protect the ground water supply, conduct water from the well, and provide full access to the well and water system parts therein. (Note: Unhydrated bentonite shall be installed at least one and one-half inches thick around the casing in any disturbed seal interval during pitless unit installation).

(80) "Porosity" means the ratio of the volume of voids in the geologic formation being drilled to the overall volume of the material without regard to size, shape, interconnection, or arrangement of openings.

(81) "Potable Water" means water which is sufficiently free from biological, chemical, physical, or radiological impurities so that users thereof

will not be exposed to or threatened with exposure to disease or harmful physiological effects.

(82) "Potentiometric Surface" means the level to which water will rise in tightly cased artesian wells (see Figure 200-2).

(83) "Pressure Grouting" means a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

(84) "Professional" means any person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering.

(85) "Public-at-Large" means a person not actively engaged in the well industry.

(86) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such a system has more than three service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by ten or more individuals per day or is a facility licensed by the Oregon Health Division.

(87) "Public Well" means a water supply well, whether publicly or privately owned, other than a municipal well, where water is provided for or is available through the single user for public consumption. This includes, but is not limited to, a school, a farm labor camp, an industrial establishment, a recreational facility, a restaurant, a motel, or a group care home.

(88) "Pumping Level" means the level of the water surface in a well while it is being pumped or bailed.

(89) "Pump Test" means the procedure involving pumping water for a specified period of time to determine the yield characteristics of an aquifer.

(90) "Refusal to Renew" means a provision in an order, or as allowed by ORS 537.747, that prohibits renewal of a well constructor's license, for a specified term not to exceed one year from the expiration date of the current license.

(91) "Remediation Well" means a well used for extracting contaminants and/or contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well."

(92) "Respondent" means the person against whom an enforcement action is taken.

(93) "Responsible Party" means the person or agency that is in charge of construction or maintenance and is either in violation as specified in a notice of violation or who may benefit from that violation.

(94) "Rough Drilling Log" means a record kept on the well site of the information needed to complete the well report for the well being constructed.

(95) "Revoke" means termination of a well constructor's license.

(96) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(97) "Sanitary Seal" means a tight fitting properly sized threaded, welded, or gasketed cap placed on the top of the permanent well casing to prevent entry of water and foreign material.

(98) "Sealant": See Grout

(99) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.005 mm in diameter.

(100) "Slope Stability Geotechnical Hole" means a geotechnical hole excavated, drilled or bored for studying and/or monitoring movement of landslide features, including water levels, or other mass-wasting features to detect zones of movement and establish whether movement is constant, accelerating, or responding to remedial measures. Hole(s) excavated, drilled or bored for the purpose of slope remediation or stabilization shall be considered a slope stability geotechnical hole. Slope stability geotechnical holes are not monitoring wells, piezometers, or water supply wells.

(101) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(102) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(103) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(104) "Sump" means a hole dug to a depth of ten feet or less with a diameter greater than ten feet in which ground water is sought or encountered.



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(105) "Suspension" means the temporary removal of the privilege to construct wells under an existing license for a period of time not to exceed one year.

(106) "System Interlock" means an interlocking mechanism used to link irrigation pumps and chemical injection units, other pumps, or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the chemical injection units will occur. (Back-siphon prevention)

(107) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(108) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(109) "Underground Injection System" means a well, improved sump, sewage drain hole, subsurface fluid distribution system, or other system or ground water point source used for the emplacement or discharge of fluids.

(110) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(111) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(112) "Water Supply Well" means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground or surface water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(113) "Water Supply Well Constructor" means any person who has a current water well constructor's license with a water supply well endorsement issued in accordance with ORS 537.747(3).

(114) "Water Supply Well Constructor's License" means a Water Well Constructor's License with a water supply well endorsement issued in accordance with ORS 537.747(3).

(115) "Water Supply Well Drilling Machine" means any power-driven driving, jetting, percussion, rotary, boring, digging, augering machine, or other equipment used in the construction or alteration of water supply wells.

(116) "Water Table" means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally. The water table is defined by the levels at which water stands in wells that penetrate the water body (see Figure 200-2).

(117) "Water Well Constructor's License" means a license to construct, alter, deepen, abandon or convert wells issued in accordance with ORS 537.747(3). Endorsements are issued to the license and are specific to the type of well a constructor is qualified to construct, alter, deepen, abandon or convert

(118) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

[ED. NOTE: Figures referenced are available from the agency]

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9, f. & ef. 12-9-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 12-1982, f. & ef. 12-14-82; Renumbered from 690-060-0050 & 690-064-0000 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 21-1990, f. & cert. ef. 12-14-90; WRD 1-1991, f. & cert. ef. 2-8-91; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-205-0200

### Water Supply Well Construction Notice Required (Start Card)

(1) Each bonded Water Supply Well Constructor licensed to operate in the State of Oregon and each landowner holding a landowner's permit shall provide notice as required in ORS 537.762 before commencing the construction, alteration, or abandonment of any water supply well or conversion of any monitoring well, geotechnical hole, or other hole to a water supply well. The start card shall contain the following information:

- Name and mailing address of the landowner;
- Street address of the well;
- The approximate location of the water supply well; and
- The proposed depth, diameter, and purpose or use if the well is new, altered, or converted.

(2) In addition to the information required pursuant to OAR 690-205-0200(1)(a)-(d), a start card may also contain information regarding the type of proposed alteration.

(3) Forms for making these reports and submitting fees shall be furnished by the Department.

(4) Landowners who construct, alter, convert, or abandon a water supply well shall also comply with OAR 690-205-0175.

[ED. NOTE: Tables and Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0035; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-1989(Temp), f. & cert. ef. 9-29-89; WRD 10-1989, f. & cert. ef. 11-20-89; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0070; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-205-0205

### Start Card Reporting Requirements

(1) The start card notification required in ORS 537.762 shall be submitted to the Department's region office within which the water supply well is being constructed, altered converted or abandoned using one of the following methods:

(a) Start cards submitted electronically shall be transmitted by a Department-approved method and shall be submitted before beginning construction, alteration, conversion or abandonment work on any water supply well.

(b) By regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; or

(c) By hand delivery, during regular office hours, before beginning the construction, alteration, conversion or abandonment work on any water supply well or

(d) By facsimile transmission (FAX) before beginning the construction, alteration, conversion or abandonment work on any water supply well. If this method is used, a legible copy of the start card shall also be mailed, or delivered to the appropriate OWRD region office no later than the day work begins.

(2) The fee required under ORS 537.762(5) for the construction of a new well, deepening of an existing well, conversion of a monitoring well, geotechnical hole, or other hole shall be submitted to the Department's Salem office with a duplicate copy of the start card. A duplicate start card is not required if the start card fee is included with a start card submitted electronically under Section (1)(a) of this rule.

(3) If a start card has been filed under section (1) and (2) of this rule and additional wells are required on the same or contiguous tax lot and for the same landowner, then start cards for the additional wells shall be filed no later than the day work begins.

(4) The Director or region office may provide an alternative means of notification. If an alternative means of notification is used, the start card shall be mailed or delivered to the region office within one week of beginning work on the water supply well. A Water Supply Well Constructor whose license has been restricted by order shall provide notice as stipulated in the order.

(5) Once received by the Department, the start card shall be confidential for a period of one year after it is received or until the water supply well report required by OAR 690-205-0210 is received, whichever is shorter.

(6) The start card may be used in an administrative enforcement action at any time, including the period of confidentiality. Once the start card is used for enforcement reasons, it is no longer confidential.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-215-0005

### Prevention of Groundwater Contamination, Health Hazard, and Waste

(1) The landowner of the property on which the water supply well is constructed is ultimately responsible for the maintenance and use of the water supply well. All water supply wells should be disinfected following the installation of pumping equipment. Refer to OAR 690-210-0380, **Appendix 2** for recommendations on well disinfection.

(2) The landowner shall maintain all water supply wells in a condition where they are not a health threat, a health hazard, a source of contamination or a source of waste of the ground water resource by allowing loss of artesian pressure or commingling of aquifers. A pitless adapter may be attached to the casing to transmit water from the well into the delivery pipeline. The pitless adapter shall be installed in such a manner as to

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prevent the contamination of the ground water resource. The landowner is responsible to assure that the space between the side of the well borehole and the well casing is sealed as required by OAR 690-215-0025.

(3) If, in the opinion of the Director, a water supply well is a health threat, a health hazard, a source of contamination, or a source of waste of the ground water resource, the Director may order discontinuance of, or impose conditions upon, the use of the water supply well. In addition, the Director may order that the well be repaired or permanently abandoned in accordance with OAR chapter 690, divisions 215 and 220 of the Standards for Construction and Maintenance of Water Supply Wells in the State of Oregon.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-062-0005; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 21-1990, f. & cert. ef. 12-14-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-215-0006

### Well Alterations

(1) Well alterations as defined in OAR 690-200-0050(7) shall be performed by a licensed Water Supply Well Constructor, or a landowner with a Landowner's Well Construction Permit and bond.

(2) Water Supply Well Constructors or a permitted and bonded landowner shall record the following data, if available, on the Water Supply Well Report as required under OAR 690-205-0210 before completing alteration work on a well:

- (a) Pre-alteration static water level and date taken.
- (b) Pre-alteration casing diameter.
- (c) Pre-alteration casing gauge.
- (d) Pre-alteration well depth.
- (e) Pre-alteration seal material.

(3) Well alteration work shall be completed in accordance with OAR 690-215. The Water Supply Well Constructor shall only be responsible for the alteration work they performed under OAR 690-215.

Stat. Auth.: ORS 536.090, 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-215-0025

### Sealing Pitless Adapter and Pitless Units

The sealing area around pitless adapter or pitless unit installations shall be replaced with unhydrated bentonite as required by OAR 690-210-0330 and shall be at least one and one-half inches thick around the casing and pitless device.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-215-0030

### Casing and Casing Extensions

(1) All well casing used to extend a well head above land surface or used in the alteration, repair or deepening of water supply wells shall meet the minimum standards in OAR 690-210.

(2) The annular space surrounding the well casing used to extend the well head shall be sealed as required by OAR 690-210 and shall be at least four inches greater than the nominal inside diameter of the permanent well casing.

**NOTE:** Prior to extending the casing on public, community, municipal, or public utility water supply wells, contact the Department of Human Services. Additional requirements may apply.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0221; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-215-0035

### Liner Pipe

All liner pipe used in the alteration, repair or deepening of water supply wells shall meet the minimum standards in OAR 690-210-0290.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-215-0040

### Casing and Sealing Wells after Disturbance

(1) If during the installation of casing, liner pipe, seals, packers, or during repair or deepening of a water supply well, the pre-existing casing is

withdrawn, or moved as to compromise the annular seal, the well shall be cased and sealed in accordance with the rules set forth in OAR 690-210.

(2) If the annular seal is not compromised when cleaning out a water supply well or installing liner pipe, the water supply well shall not require re-casing or re-sealing.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0226; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-220-0030

### Permanent Abandonment

(1) Any water supply well that is to be permanently abandoned shall be completely filled in such a manner that vertical movement of water within the well bore, including vertical movement of water within the annular space surrounding the well casing, is effectively and permanently prevented. If a dry or non-producing water supply well is to be permanently abandoned, it shall be abandoned in accordance with these standards. Unless otherwise stated in these rules, all permanent water supply well abandonments shall be performed by a licensed Water Supply Well Constructor.

(2) The abandonment procedure shall be recorded on a form provided by or previously approved in writing by the Department. The form shall include, as a minimum, all the requirements as listed in OAR 690-205-0210, plus:

(a) Method of abandonment;

(b) If assigned, the well identification tag number, original start card number, and owner's well number of the abandoned well.

(3) When a well that has a well identification tag on it is permanently abandoned, the well identification tag shall be destroyed. The well identification tag shall not be reused.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0010; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-220-0040

### Abandonment of Cased Wells

(1) If all or a portion of the water supply well casing or the liner pipe is not removed during the abandonment of a well, the remaining casing or liner shall be thoroughly ripped or perforated. The number and size of perforations may vary, however, the perforations must be sufficient enough to allow grout to migrate outside the casing and effectively prevent the vertical movement of water. The annular space between the casing or liner and the drillhole wall shall be effectively and completely filled with cement grout applied under pressure.

(2) Perforations are not required in the sealed interval provided proof of the original seal can be verified with the original well report. The verified seal interval shall be filled with cement grout, concrete or unhydrated bentonite.

(3) Uncased portions of a cased well to be abandoned shall be filled in accordance with OAR 690-220-0030 through 690-220-0050.

(4) The well casing to be abandoned may be severed below land surface and removed. (See **Figure 220-3**.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79, Renumbered from 690-063-0011; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-220-0050

### Abandonment of Uncased Wells

(1) Uncased portions of water supply wells to be permanently abandoned shall be completely filled with cement grout, concrete or unhydrated bentonite: (See **Figure 220-1**) (**Figure 220-2**)

(2) Uncased portions of water supply wells that penetrate a water-bearing formation may be abandoned with alternating layers of cement grout, concrete or unhydrated bentonite and clean gravel throughout the water-bearing zones in the following manner:

(a) In all cases, non water-bearing zones shall be filled with cement grout, concrete or unhydrated bentonite.

(b) Clean gravel may only be placed in the water-bearing zones verified by an original water supply well report or other documentation acceptable to the Department. A vertical column of gravel that exceeds a total length of 50 feet shall only be placed with prior Department approval. Non water-bearing portions shall be filled with a plug of cement grout, concrete or unhydrated bentonite. Gravel shall not exceed a maximum of 50% of

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well depth without prior Department approval. Gravel may be placed in multiple water-bearing zones, not to exceed 50 feet for each zone. In no case shall gravel be placed above 18 feet below land surface.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79, Renumbered from 690-063-0012; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-220-0070

### Abandonment of Artesian Wells

In addition to OAR 690-220-0040 and 690-220-0050, the flow of artesian water supply wells to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the well to land surface. (See **Figure 220-4**, 1986.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0015; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-220-0080

### Abandonment of Driven and Jetted Wells

Provided an annular seal meeting the requirements of OAR 690-210-0180 can be confirmed, a cement grout plug shall be placed by grout pipe opposite all perforations or openings in the water supply well casing. The remainder of the well shall be filled with cement grout. If no annular seal can be confirmed, the well shall be abandoned by removing the casing and filling the borehole with cement grout (see OAR 690-220-0120).

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0020; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-220-0115

### Unhydrated Bentonite and Method of Placement

(1) When abandoning a pre-existing well with unhydrated bentonite the Water Supply Well Constructor shall provide additional notification to the Regional Well Inspector or the Well Construction Program Coordinator in Salem by fax, e-mail or telephone 72 hours prior to starting abandonment work. The additional notice referenced under this section shall be effective January 1, 2009, through December 31, 2013.

(a) In case of an emergency, the additional notification is not required; however, the Water Supply Well Constructor shall notify the Department prior to beginning abandonment work as required in OAR 690-205-0200.

(b) The Department will review this provision prior to December 31, 2013, to evaluate the effectiveness of unhydrated bentonite in the abandonment of water supply wells.

(2) Unhydrated bentonite used in the abandonment of water supply wells shall meet the following requirements:

- (a) Specifically designed for use in water supply wells; and
- (b) Within industry tolerance for dry western sodium bentonite; and
- (c) Free of polymers that promote bacterial growth; and
- (d) Manufactured to be 3/8-inch or 3/4-inch; and
- (e) National Sanitation Foundation (NSF) approved or have a swell index greater than 15 milliliters (ml) per 2 grams (gm).

(3) Powdered bentonite, bentonite grout or bentonite slurry shall not be used to abandon water supply wells.

(4) Unhydrated bentonite shall only be used to abandon water supply wells when in contact with water having less than 800 parts per million (ppm) total dissolved solids (TDS).

(a) Unhydrated bentonite may be used to abandon water supply wells exceeding 800 ppm TDS if the bentonite manufacturer provides documentation that their product can be used in water that exceeds 800 ppm TDS.

(1) Prior Department approval is required before placement.

(2) The bentonite manufacturer's documentation and Department approval shall be submitted with the Water Supply Well Report as required in OAR 690-205-0210.

(b) In all cases, the TDS shall be reported on the Water Supply Well Report as required in OAR 690-205-0210.

(5) Water supply wells with casing that is at least four inches in diameter and less than eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 700 feet, if being placed

through water. Unhydrated bentonite may be used deeper with prior Department approval.

(6) Water supply wells with casing that is at least four inches in diameter and less than eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 1000 feet, if being placed through air. Unhydrated bentonite may be used deeper with prior Department approval.

(7) Water supply wells with casing that is at least eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 1200 feet, if being placed through water. Unhydrated bentonite may be used deeper with prior Department approval.

(8) Water supply wells with casing that is at least eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 1500 feet, if being placed through air. Unhydrated bentonite may be used deeper with prior Department approval.

(9) Unhydrated bentonite shall be screened across a minimum 1/4-inch mesh screen during placement to minimize the introduction of bentonite dust into the sealing interval. The resulting seal shall be free of voids or bridges.

(10) A sounding or tamping tool shall be used in the sealing interval during placement to measure the fill rate and to break up possible bridges or cake formations.

(11) Unhydrated bentonite shall be poured at the manufacturers recommended rate in the water-filled portion of the drillhole and shall not be less than two minutes per 50 pound sack.

(12) In a dry sealing interval, (above the water level), bentonite shall be hydrated from land surface to a minimum depth of 50 feet below land surface. Unhydrated bentonite shall be hydrated with potable water in maximum ten foot lifts to ensure activation.

(13) The estimated and actual volume of sealing material used shall be calculated and reported on the Water Supply Well Report as required by OAR 690-205-0210.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-240-0010

### Definitions

The following definitions apply to terms as used in monitoring well, geotechnical hole and other hole rules, OAR 690-240-0005 to 690-240-0640. No other definitions of these same words apply:

(1) "Abandonment, Permanent" means to remove all or any portion of a monitoring well from service by filling it in such a manner that vertical movement of water within the well bore and within the annular space surrounding the well casing is effectively and permanently prevented. This term is synonymous with "decommission".

(2) "Abandonment, Temporary" means to remove a drilling machine from a well site after completing or altering a well provided the well is not immediately put into service, or to remove a well from service with the intent of using it in the future.

(3) "Altering a Well" means the deepening, re-casing, perforating, re-perforating, installation of packers or seals, and other material changes in the design or construction of a well. Material changes include but are not limited to the installation or modification of well casing including casing extensions, or installation or modification of liner pipe, or under reaming of the borehole.

(4) "Annular Space" means the space between the drillhole wall and the outer well casing.

(5) "Aquifer" means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature. (**Figure 240-1**)

(6) "Area of Known or Reasonably Suspected Contamination" means a site that is currently under investigation by the Oregon Department of Environmental Quality, U.S. Environmental Protection Agency, or other state or federal agency for the presence of contaminants, or a site where a prudent person would suspect contamination after conducting an appropriate inquiry consistent with good commercial or customary practice as to the nature of the property.

(7) "Artesian Aquifer" means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian well. (**Figure 240-1**).



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(8) "Artesian Monitoring Well" means a monitoring well in which ground water is under sufficient pressure to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian monitoring well.

(9) "Bored Well" means a well constructed with the use of earth augers turned either by hand or by power equipment.

(10) "Casing" means the outer tubing, pipe, or conduit, welded or thread coupled, and installed in the borehole during or after drilling to support the sides of the well and prevent caving. Casing can be used, in conjunction with proper seal placement, to shut off water, gas, or contaminated fluids from entering the hole, and to prevent waste of ground water.

(11) "Casing Seal" means the water tight seal established in the well bore between the well casing and the drillhole wall, above the filter pack seal, to prevent the inflow and movement of surface water or shallow ground water in the well annulus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(12) "Civil Engineer" means an individual registered by the State of Oregon to practice civil engineering.

(13) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

(14) "Commission" means the Oregon Water Resources Commission.

(15) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(16) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer. (Figure 240-1)

(17) "Consolidated Formation" means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, materials such as basalt, sandstone, shale, hard claystone, and granite.

(18) "Contamination" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(19) "Continuing Education" means that education required as a condition of licensure under ORS 537.747, to maintain the skills necessary for the protection of ground water, the health and general welfare of the citizens of Oregon and the competent practice of the construction, alteration, abandonment, conversion, and maintenance of water supply wells, monitoring wells, and geotechnical holes.

(20) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(21) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(22) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(23) "Converting" a well means changing the use of an existing well or hole not previously used to either withdraw or monitor water such that the well or hole can be used to either withdraw or monitor water.

(24) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(25) "Department" means the Oregon Water Resources Department.

(26) "Director" means the Director of the Department or the Director's authorized representatives.

(27) "Documentation of Completion" means written evidence or documentation demonstrating attendance and completion of a continuing education course, including but not limited to: a certificate of completion, diploma, transcript, certified class roster, or other documentation as approved by the Continuing Education Committee.

(28) "Dug Well" means a well in which the excavation is made by the use of digging equipment such as backhoes, clam shell buckets, or sand buckets. (See Hand dug well)

(29) "Excavation" means a free-standing cavity with greater width than depth constructed in the earth's surface which has a primary purpose other than seeking water or water quality monitoring.

(30) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(31) "Filter Pack" means the granular material placed in the annular space between the well screen and the borehole.

(32) "Filter Pack Seal" means the fine grained sand or dry bentonite which is placed in the annulus above the filter pack and prevents grout infiltration into the filter pack.

(33) "Geologic Formation" means an igneous, sedimentary or metamorphic material that is relatively homogeneous and is sufficiently recognized as to be distinguished from the adjacent material. The term is synonymous with "formation".

(34) "Geologist" means an individual registered by the State of Oregon to practice geology.

(35) "Geotechnical hole" means a hole constructed to collect or evaluate subsurface data or information, monitor movement of landslide features, or to stabilize or dewater landslide features. Geotechnical holes are not monitoring wells or water supply wells as defined below. Various classes and examples of geotechnical holes are listed in OAR 690-240-0035(6)-(9).

(36) "Grout" means approved cement, concrete or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(37) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(38) "Hand dug well" means a well in which the excavation is only made by the use of picks, shovels, spades, or other similar hand operated implements. (See Dug Well)

(39) "Hazardous Materials Training" means training as defined by OAR 437-002-0100 Adoption by Reference Subdivision H Hazardous Materials 1910.120 Hazardous Waste Operations and Emergency Response.

(40) "Hazardous Waste" means a substance as defined by ORS 466.005.

(41) "Health Hazard" means a condition where there are sufficient concentrations of biological, chemical, or physical, including radiological, contaminants in the water that are likely to cause human illness, disorders, or disability. These include, but are not limited to naturally occurring substances, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes. Sufficient concentrations of a contaminant include but are not limited to contaminant levels set by the Oregon Department of Environmental Quality and Oregon Health Division.

(42) "Health Threat" means a condition where there is an impending health hazard. The threat may be posed by, but not limited to: a conduit for contamination, or a well affecting migration of a contaminant plume, or the use of contaminated water. A well in which the construction is not verified by a monitoring well report or geophysical techniques may be considered a conduit for contamination in certain circumstances. Those circumstances include, but are not limited to: an unused and neglected well or a well for which no surface seal was required. A well in which the casing seal, filter pack seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(43) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(44) "Hydrologic Cycle" is the general pattern of water movement by evaporation from sea to atmosphere, by precipitation onto land, and by return to sea under influence of gravity.

(45) "Impermeable Sealing Material" means cement or bentonite which is used to fill the open annulus.

(46) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(47) "Leakage" means movement of surface and/or subsurface water around the well casing or seal.

(48) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(49) "Monitoring Well Constructor" means any person who has a current water well constructor's license with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(50) "Monitoring Well Constructor's License" means a Water Well Constructor's License with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(51) "Monitoring Well Drilling Machine" means any driving, jetting, percussion, rotary, boring, auguring, or other equipment used in the construction, alteration, or abandonment of monitoring wells.

(52) "Order" means any action satisfying the definition given in ORS Chapter 183 or any other action so designated in ORS 537.505 to 537.795.

(53) "Other Hole" means a hole other than a water supply well, monitoring well, or geotechnical hole, however constructed, in naturally occurring or artificially emplaced earth materials through which ground water can become contaminated. Holes constructed under ORS Chapters 517, 520, and 522 are not subject to these rules. Examples of other holes are listed in OAR 690-240-0030.

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(54) "Perched Ground Water" means ground water held above the regional or main water table by a less permeable underlying earth or rock material. (Figure 240-1)

(55) "Permeability" means the ability of material to transmit fluid, usually described in units of gallons per day per square foot of cross-section area. It is related to the effectiveness with which pore spaces transmit fluids.

(56) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(57) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(58) "Piezometer" means a type of monitoring well designed solely to obtain ground water levels. Piezometers are prohibited in areas of known or reasonably suspected contamination. This term is synonymous with observation well.

(59) "Porosity" means the ratio of the volume of voids in the geologic formation being drilled to the overall volume of the material without regard to size, shape, interconnection, or arrangement of openings.

(60) "Potable Water" means water which is sufficiently free from biological, chemical, physical, or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects.

(61) "Potentiometric Surface" means the level to which water will rise in tightly cased wells. (Figure 240-1).

(62) "Pressure Grouting" means a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

(63) "Professional" means any person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering.

(64) "Public-at-Large" means a person not actively engaged in the well industry.

(65) "Refusal to Renew" means a provision in an order, or as allowed by ORS 537.747, that prohibits renewal of a well constructor's license, for a specified term not to exceed one year from the expiration date of the current license.

(66) "Remediation Well" means a well used for extracting contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well".

(67) "Respondent" means the person against whom an enforcement action is taken.

(68) "Responsible Party" means the person or agency that is in charge of construction or maintenance, or the landowner of record and is either in violation as specified in a notice of violation or who may benefit from that violation.

(69) "Rough Drilling Log" means a record kept on the well site of the information needed to complete the well report for the well being constructed.

(70) "Revoke" means termination of a well constructor's license.

(71) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(72) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.002 mm in diameter.

(73) "Slope Stability Geotechnical Hole" means a geotechnical hole excavated, drilled or bored for studying and/or monitoring movement of landslide features, including water levels, or other mass-wasting features to detect zones of movement and establish whether movement is constant, accelerating, or responding to remedial measures. Hole(s) excavated, drilled or bored for the purpose of slope remediation or stabilization shall be considered a slope stability geotechnical hole. Slope stability geotechnical holes are not monitoring wells, piezometers, or water supply wells.

(74) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(75) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(76) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(77) "Sump" means a hole dug to a depth of ten feet or less with a diameter greater than ten feet in which ground water is sought or encountered.

(78) "Suspension" means the temporary removal of the privilege to construct wells under an existing license for a period of time not to exceed one year.

(79) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(80) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(81) "Underground Injection System" means a well, improved sump, sewage drain hole, subsurface fluid distribution system, or other system or ground water point source used for the emplacement or discharge of fluids.

(82) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(83) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(84) "Water Supply Well" means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(85) "Water Supply Well Constructor" means any person who has a current water well constructor's license with a water supply well endorsement issued in accordance with ORS 537.747(3).

(86) "Water Supply Well Constructor's License" means a Water Well Constructor's License with a water supply well endorsement issued in accordance with ORS 537.747(3).

(87) "Water Table" means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally. The water table is defined by the levels at which water stands in wells that penetrate the water body. (See Figure 240-1)

(88) "Water Well Constructor's License" means a license to construct, alter, deepen, abandon or convert wells issued in accordance with ORS 537.747(3). Endorsements are issued to the license and are specific to the type of well a constructor is qualified to construct, alter, deepen, abandon or convert.

(89) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

### 690-240-0035

#### Geotechnical Holes: General Performance and Responsibility Requirements

(1) A geotechnical hole is defined in OAR 690-240-0010(35). Geotechnical holes may be either cased or uncased and are constructed to evaluate subsurface data or information (geologic, hydrogeologic, chemical, or other physical characteristics). Geotechnical holes are not "wells" because their construction and/or duration of use are different than wells and therefore are not subject to the same requirements as wells. Geotechnical holes are broken into the following classifications:

- (a) Temporary (abandoned within 72 hours) geotechnical holes;
- (b) Cased permanent geotechnical holes;
- (c) Uncased permanent geotechnical holes; or
- (d) Slope stability geotechnical holes.

(2) A geotechnical hole report, signed by the responsible professional, must be submitted to the department if any of the criteria listed in subsections (a) through (d) below is met. The geotechnical hole is:

- (a) Greater than 18 feet deep; or
- (b) Within 50 feet of a water supply or monitoring well; or
- (c) Used to make a determination of water quality; or
- (d) Constructed in an area of known or reasonably suspected contamination.

(3) Geotechnical holes greater than ten feet in depth and less than eighteen feet in depth that do not meet any of the criteria spelled out in

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OAR 690-240-0035(2) shall have a professional person as described in OAR 690-240-0035(4)(c) responsible for the construction and abandonment of the geotechnical hole but do not require a 'Geotechnical Hole Report' to be filed.

(4)(a) Although enforcement actions may be exercised against other parties, the landowner of the property where the geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, and abandonment of the geotechnical hole;

(b) Conversion of a geotechnical hole to a water supply or monitoring well shall be considered by the Water Resources Department on a case by case basis;

(c) When a geotechnical hole report is required, or if it is between 10' and 18', any person (professional) who is responsible for the construction, alteration or abandonment of a geotechnical hole shall have one of the following certifications:

(A) A current Oregon Monitoring Well Constructor's License;

(B) A current Oregon Water Supply Well Constructor's License;

(C) Be registered by the State of Oregon as a Registered Geologist; or

(D) Be registered by the State of Oregon as a Professional Engineer.

(d) The professional shall show proof of license or registration and a current photo identification to Department employees upon request.

(e) In order to protect the ground water resource, all geotechnical holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water, or loss of artesian pressure.

(f) If the geotechnical hole is completed above ground, it shall have a minimum casing height of one foot above finished grade and a lockable cap with lock shall be attached to the top of the casing. If a geotechnical hole, except a slope stability hole, is completed flush with the land surface, a lockable watertight cap with lock, shall be attached to the top of the casing. A vault or monument designed to be watertight, level with the ground surface, shall be installed to prevent the inflow of surface water. The cover must be designed to withstand the maximum expected loadings.

(5)(a) A 'Geotechnical Hole Report' shall be prepared for each geotechnical hole, including unsuccessful geotechnical holes, constructed, altered, converted, or abandoned if the hole meets any of the requirements of OAR 690-240-0035(2) above.

(b) The 'Geotechnical Hole Report' shall be filed with the Department within 30 days of the completion of the geotechnical hole;

(c) The report shall be prepared in triplicate on forms furnished or previously approved in writing by the Water Resources Department. The original shall be furnished to the Director, the first copy shall be retained by the professional, and the second copy shall be given to the landowner or customer who contracted for the construction of the geotechnical hole;

(d) In the event any drilling equipment or other tools are left in a geotechnical hole the professional shall enter this fact on the Geotechnical Hole Report;

(e) A copy of any special authorizations or special standards issued by the Director shall be attached to the Geotechnical Hole Report. See OAR 690-240-0006 for information concerning special standards;

(f) The report of geotechnical hole construction shall include, as a minimum, the following:

(A) Landowner name and address;

(B) Started/Completed date;

(C) Location of the geotechnical hole by County, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);

(D) Use of geotechnical hole;

(E) Type of geotechnical hole;

(F) Depth;

(G) Map showing location of geotechnical hole on site must be attached and shall include an approximate scale and a north arrow;

(H) General hydrologic and geologic information as indicated on the Geotechnical Hole Report; and

(I) Such additional information as required by the Department.

(6) Temporary geotechnical holes:

(a) Temporary geotechnical holes include but are not limited to: drive points, soil and rock borings, temporary sample holes, permeability test holes, and soil vapor holes;

(b) Temporary geotechnical holes shall be abandoned within 72 hours of initial construction;

(c) Any temporary casing that has been installed shall be removed as part of the abandonment.

(7) Cased permanent geotechnical holes:

(a) Cased permanent geotechnical holes include but are not limited to: gas migration holes, cathodic protection holes, vapor extraction holes, and air sparging holes;

(b) If permanent casing is installed in a geotechnical hole, it shall meet the casing requirements in OAR 690-240-0430, 690-210-0210, or 690-210-0190 and the sealing requirements in 690-240-0475.

(8) Uncased permanent geotechnical holes:

(a) Uncased permanent geotechnical holes include but are not limited to: pneumatic and electrical piezometers;

(b) Temporary casing can be used during the construction of the uncased permanent geotechnical hole but must be removed prior to completion. Surface casing (5 feet maximum) may be installed for placement of logging or recording equipment.

(9) Slope stability geotechnical holes.

(a) Slope stability geotechnical holes include but are not limited to: slope instrumentation holes such as slope inclinometers, and slope remedial holes.

(b) Slope stability geotechnical holes are defined in OAR 690-240-0010(72). Such holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water.

(c) When a Geotechnical Hole Report is required under OAR 690-240-0035(2) for a slope stability geotechnical hole that is constructed to facilitate water level measurements, an affidavit from an engineer or geologist qualified to perform geotechnical investigations shall be attached to the Geotechnical Hole Report. The affidavit shall have the qualified engineer or geologist's stamp on it and shall certify that the slope stability geotechnical hole is on a landslide or a mass-wasting feature.

(10) Geotechnical Holes abandonment:

(a) Geotechnical holes shall be abandoned so that they do not:

(A) Connect water bearing zones or aquifers;

(B) Allow water to move vertically with any greater facility than in the undisturbed condition prior to construction of the geotechnical hole; or

(C) Allow surface water to enter the hole.

(b) Temporary geotechnical holes constructed to collect a water quality sample shall be abandoned in accordance with OAR 690-240-0510.

Stat. Auth.: ORS 537.780

Stats. Implemented:

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-240-0375

### Monitoring Well Construction Notice Required (Start Card)

(1) Each bonded Monitoring Well Constructor licensed to operate in the State of Oregon and each landowner holding a landowner's permit shall provide notice as required in ORS 537.762 before commencing the construction, alteration, or abandonment of any monitoring well or conversion of any other hole, geotechnical hole, or water supply well to a monitoring well. The start card shall contain the following information:

(a) Name and mailing address of the landowner;

(b) Street address of the well;

(c) The approximate location of the monitoring well; and

(d) The proposed depth, diameter, and purpose or use if the well is new, altered, or converted.

(2) In addition to the information required pursuant to OAR 690-240-0375(1)(a)-(d), a start card may also contain information regarding the type of proposed alteration.

(3) Forms for making these reports and submitting fees shall be furnished by the Department.

(4) OAR 690-240-0340 shall apply to landowners who construct, alter, convert, or abandon a monitoring well.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0090; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

## 690-240-0385

### Start Card Reporting Requirements

(1) The start card notification required in ORS 537.762 shall be submitted to the Department's region office within which the monitor well is being constructed, altered converted or abandoned using one of the following methods:



## ADMINISTRATIVE RULES

(a) Start cards submitted electronically shall be transmitted by a Department-approved method and shall be submitted before beginning construction, alteration, conversion or abandonment work of any monitor well.

(b) By regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; or

(c) By hand delivery, during regular office hours, before beginning the construction, alteration, conversion or abandonment work on any monitoring well; or

(d) By facsimile transmission (FAX) before beginning the construction, alteration, conversion or abandonment work on any monitoring well. If this method is used, a legible copy of the start card shall also be mailed or delivered to the appropriate OWRD region office no later than the day work is commenced.

(2) The fee required under ORS 537.762(5) for the construction of a new well, deepening of an existing well, conversion of a water supply well, geotechnical hole or other hole shall be submitted to the Department's Salem office with a duplicate copy of the start card. A duplicate start card is not required if the start card fee is included with a start card submitted electronically under Section (1)(a) of this rule.

(3) If a start card has been filed under section (1) and (2) of this rule and additional wells are required on the same or contiguous tax lot and for

the same landowner, then start cards for the additional wells shall be filed no later than the day work begins.

(4) The Director or region office may provide an alternate means of notification. If an alternative means of notification is used, the start card shall be mailed or delivered to the region office within one week of beginning work on the monitoring well. A Monitoring Well Constructor whose license has been restricted by order shall provide notice as stipulated in the order.

(5) Once received by the Department, the start card shall be confidential for a period of one year after it is received or until the monitoring well report required by OAR 690-240-0395 is received, whichever is shorter.

(6) The start card may be used in an administrative enforcement action at any time, including the period of confidentiality. Once the start card is used for enforcement reasons, it is no longer confidential.

**NOTE:** Region office fax and telephone numbers are listed in Table 240-2. Water Resources Department Regional boundaries are shown in Figure 240-2.

ED. NOTE: Tables and Figures referenced are available from the agency.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

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137-055-3420	1-2-2009	Amend	2-1-2009	150-308A.056	1-1-2009	Amend	2-1-2009
137-055-3420(T)	1-2-2009	Repeal	2-1-2009	150-308A.059	1-1-2009	Repeal	2-1-2009
137-055-6210	1-2-2009	Amend	2-1-2009	150-309.110(1)-(B)	1-1-2009	Am. & Ren.	2-1-2009
137-055-6210(T)	1-2-2009	Repeal	2-1-2009	150-309.110(1)-(E)	1-1-2009	Am. & Ren.	2-1-2009
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141-001-0005	12-10-2008	Amend	1-1-2009	150-311.706(1)	1-1-2009	Adopt	2-1-2009
141-001-0010	12-10-2008	Amend	1-1-2009	150-314.402(1)	1-1-2009	Amend	2-1-2009
141-001-0020	12-10-2008	Amend	1-1-2009	150-314.402(4)(b)	1-1-2009	Amend	2-1-2009
141-040-0020	1-1-2009	Amend	1-1-2009	150-314.515(2)	1-1-2009	Amend	2-1-2009
141-040-0030	1-1-2009	Amend	1-1-2009	150-314.752	1-1-2009	Amend	2-1-2009
141-040-0035	1-1-2009	Repeal	1-1-2009	150-316.007-(B)	1-1-2009	Amend	2-1-2009
141-040-0040	1-1-2009	Repeal	1-1-2009	150-316.007-(B)	1-5-2009	Amend	2-1-2009
141-040-0211	1-1-2009	Amend	1-1-2009	150-316.082(1)-(B)	1-1-2009	Amend	2-1-2009
141-040-0212	1-1-2009	Amend	1-1-2009	150-316.127-(9)	1-1-2009	Amend	2-1-2009
141-040-0213	1-1-2009	Adopt	1-1-2009	150-316.202(3)	1-1-2009	Amend	2-1-2009
141-040-0214	1-1-2009	Amend	1-1-2009	150-316.791	1-1-2009	Adopt	2-1-2009
141-045-0010	1-1-2009	Amend	1-1-2009	150.309.067(1)(b)	1-1-2009	Am. & Ren.	2-1-2009
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141-045-0031	1-1-2009	Amend	1-1-2009	166-200-0010	12-10-2008	Amend	1-1-2009
141-045-0041	1-1-2009	Amend	1-1-2009	166-200-0015	12-10-2008	Amend	1-1-2009
141-045-0061	1-1-2009	Amend	1-1-2009	166-200-0020	12-10-2008	Amend	1-1-2009
141-045-0100	1-1-2009	Amend	1-1-2009	166-200-0025	12-10-2008	Amend	1-1-2009
141-045-0115	1-1-2009	Amend	1-1-2009	166-200-0030	12-10-2008	Amend	1-1-2009
141-045-0126	1-1-2009	Amend	1-1-2009	166-200-0035	12-10-2008	Amend	1-1-2009
141-045-0130	1-1-2009	Amend	1-1-2009	166-200-0040	12-10-2008	Amend	1-1-2009
141-050-0500	12-10-2008	Amend	1-1-2009	166-200-0045	12-10-2008	Amend	1-1-2009
141-050-0530	12-10-2008	Repeal	1-1-2009	166-200-0050	12-10-2008	Amend	1-1-2009
141-050-0535	12-10-2008	Repeal	1-1-2009	166-200-0055	12-10-2008	Amend	1-1-2009
141-050-0890	12-10-2008	Renumber	1-1-2009	166-200-0060	12-10-2008	Amend	1-1-2009
141-050-0900	12-10-2008	Amend	1-1-2009	166-200-0065	12-10-2008	Amend	1-1-2009
141-050-0905	12-10-2008	Amend	1-1-2009	166-200-0070	12-10-2008	Amend	1-1-2009
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141-050-0940	12-10-2008	Amend	1-1-2009	166-200-0085	12-10-2008	Amend	1-1-2009
141-050-0945	12-10-2008	Repeal	1-1-2009	166-200-0090	12-10-2008	Amend	1-1-2009
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141-050-0976	12-10-2008	Amend	1-1-2009	166-200-0105	12-10-2008	Amend	1-1-2009
141-050-0982	12-10-2008	Amend	1-1-2009	166-200-0110	12-10-2008	Amend	1-1-2009
141-086-0185	1-1-2009	Amend	1-1-2009	166-200-0115	12-10-2008	Amend	1-1-2009
141-086-0190	1-1-2009	Repeal	1-1-2009	166-200-0120	12-10-2008	Amend	1-1-2009
141-086-0200	1-1-2009	Amend	1-1-2009	166-200-0125	12-10-2008	Amend	1-1-2009
141-086-0210	1-1-2009	Amend	1-1-2009	166-200-0130	12-10-2008	Amend	1-1-2009
141-086-0220	1-1-2009	Amend	1-1-2009	166-200-0135	12-10-2008	Amend	1-1-2009
141-086-0222	1-1-2009	Adopt	1-1-2009	166-200-0140	12-10-2008	Amend	1-1-2009
141-086-0225	1-1-2009	Amend	1-1-2009	166-200-0145	12-10-2008	Amend	1-1-2009
141-086-0228	1-1-2009	Amend	1-1-2009	170-040-0090	11-28-2008	Adopt	1-1-2009
141-086-0230	1-1-2009	Amend	1-1-2009	170-040-0100	11-28-2008	Adopt	1-1-2009
141-086-0240	1-1-2009	Amend	1-1-2009	170-055-0001	12-29-2008	Adopt	2-1-2009
141-091-0005	12-10-2008	Amend	1-1-2009	170-055-0005	12-29-2008	Repeal	2-1-2009
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150-294.435(1)-(B)	1-1-2009	Repeal	2-1-2009	170-060-1010	12-29-2008	Amend	2-1-2009
150-305.220(1)	1-1-2009	Amend	2-1-2009	170-061-0000	12-29-2008	Amend	2-1-2009
150-305.220(2)	1-1-2009	Amend	2-1-2009	170-061-0005	12-29-2008	Repeal	2-1-2009
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170-061-0200	12-29-2008	Amend	2-1-2009	291-127-0260	12-16-2008	Amend(T)	2-1-2009
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170-062-0000	12-29-2008	Amend	2-1-2009	291-158-0015	12-26-2008	Amend	2-1-2009
170-063-0000	12-29-2008	Amend	2-1-2009	291-158-0025	12-26-2008	Amend	2-1-2009
170-071-0005	12-29-2008	Amend	2-1-2009	291-158-0035	12-26-2008	Amend	2-1-2009
177-040-0001	1-1-2009	Amend	2-1-2009	291-158-0045	12-26-2008	Amend	2-1-2009
177-040-0005	1-1-2009	Amend	2-1-2009	291-158-0055	12-26-2008	Amend	2-1-2009
177-040-0030	1-1-2009	Amend	2-1-2009	291-158-0065	12-26-2008	Amend	2-1-2009
177-040-0050	1-1-2009	Amend	2-1-2009	291-158-0075	12-26-2008	Amend	2-1-2009
177-040-0052	1-1-2009	Amend	2-1-2009	330-061-0005	12-5-2008	Amend	1-1-2009
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177-045-0030	1-1-2009	Amend	2-1-2009	331-030-0000	12-1-2008	Amend(T)	1-1-2009
177-045-0040	1-1-2009	Repeal	2-1-2009	331-030-0005	12-1-2008	Adopt(T)	1-1-2009
177-046-0020	11-23-2008	Amend(T)	1-1-2009	331-030-0010	12-1-2008	Amend(T)	1-1-2009
177-046-0150	12-1-2008	Repeal	1-1-2009	331-810-0038	12-1-2008	Adopt	1-1-2009
177-050-0025	12-1-2008	Amend	1-1-2009	333-565-0000	1-1-2009	Amend	2-1-2009
177-050-0027	12-1-2008	Amend	1-1-2009	333-675-0050	1-1-2009	Amend	2-1-2009
177-050-0100	12-1-2008	Adopt	1-1-2009	339-010-0023	1-1-2009	Amend	1-1-2009
177-069-0000	12-1-2008	Adopt	1-1-2009	339-010-0035	1-1-2009	Amend	1-1-2009
177-069-0010	12-1-2008	Adopt	1-1-2009	339-010-0050	1-1-2009	Amend	1-1-2009
177-069-0020	12-1-2008	Adopt	1-1-2009	339-020-0015	1-1-2009	Adopt	1-1-2009
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177-069-0050	12-1-2008	Adopt	1-1-2009	340-216-0060	12-31-2008	Amend	2-1-2009
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177-081-0020	11-23-2008	Amend(T)	1-1-2009	340-228-0601	12-31-2008	Adopt	2-1-2009
177-083-0020	11-23-2008	Amend(T)	1-1-2009	340-228-0602	12-31-2008	Amend	2-1-2009
177-083-0030	11-23-2008	Amend(T)	1-1-2009	340-228-0603	12-31-2008	Amend	2-1-2009
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177-085-0010	1-4-2009	Amend	1-1-2009	340-228-0608	12-31-2008	Repeal	2-1-2009
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177-085-0015	1-4-2009	Amend	1-1-2009	340-228-0610	12-31-2008	Repeal	2-1-2009
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177-085-0030	1-4-2009	Amend	1-1-2009	340-228-0613	12-31-2008	Adopt	2-1-2009
177-085-0035	1-4-2009	Amend	1-1-2009	340-228-0614	12-31-2008	Repeal	2-1-2009
177-085-0040	1-4-2009	Amend	1-1-2009	340-228-0615	12-31-2008	Adopt	2-1-2009
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213-017-0006	1-1-2009	Amend(T)	2-1-2009	340-228-0620	12-31-2008	Repeal	2-1-2009
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291-022-0160	11-25-2008	Amend(T)	1-1-2009	340-228-0627	12-31-2008	Adopt	2-1-2009
291-022-0161	11-25-2008	Adopt(T)	1-1-2009	340-228-0628	12-31-2008	Repeal	2-1-2009
291-022-0162	11-25-2008	Adopt(T)	1-1-2009	340-228-0629	12-31-2008	Adopt	2-1-2009
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340-228-0634	12-31-2008	Repeal	2-1-2009	340-244-0240	12-31-2008	Adopt	2-1-2009
340-228-0635	12-31-2008	Adopt	2-1-2009	340-244-0242	12-31-2008	Adopt	2-1-2009
340-228-0636	12-31-2008	Repeal	2-1-2009	340-244-0244	12-31-2008	Adopt	2-1-2009
340-228-0637	12-31-2008	Adopt	2-1-2009	340-244-0246	12-31-2008	Adopt	2-1-2009
340-228-0638	12-31-2008	Repeal	2-1-2009	340-244-0248	12-31-2008	Adopt	2-1-2009
340-228-0640	12-31-2008	Repeal	2-1-2009	340-244-0250	12-31-2008	Adopt	2-1-2009
340-228-0642	12-31-2008	Repeal	2-1-2009	340-244-0252	12-31-2008	Adopt	2-1-2009
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340-228-0646	12-31-2008	Repeal	2-1-2009	350-040-0040	1-14-2009	Amend(T)	2-1-2009
340-228-0648	12-31-2008	Repeal	2-1-2009	350-050-0020	1-14-2009	Amend(T)	2-1-2009
340-228-0650	12-31-2008	Repeal	2-1-2009	350-050-0060	1-14-2009	Amend(T)	2-1-2009
340-228-0652	12-31-2008	Repeal	2-1-2009	407-001-0000	12-5-2008	Amend	1-1-2009
340-228-0654	12-31-2008	Repeal	2-1-2009	407-001-0005	12-5-2008	Amend	1-1-2009
340-228-0656	12-31-2008	Repeal	2-1-2009	407-001-0010	12-5-2008	Amend	1-1-2009
340-228-0658	12-31-2008	Repeal	2-1-2009	407-007-0200	1-1-2009	Amend	2-1-2009
340-228-0660	12-31-2008	Repeal	2-1-2009	407-007-0210	1-1-2009	Amend	2-1-2009
340-228-0662	12-31-2008	Repeal	2-1-2009	407-007-0220	1-1-2009	Amend	2-1-2009
340-228-0664	12-31-2008	Repeal	2-1-2009	407-007-0230	1-1-2009	Amend	2-1-2009
340-228-0666	12-31-2008	Repeal	2-1-2009	407-007-0240	1-1-2009	Amend	2-1-2009
340-228-0668	12-31-2008	Repeal	2-1-2009	407-007-0250	1-1-2009	Amend	2-1-2009
340-228-0670	12-31-2008	Repeal	2-1-2009	407-007-0260	1-1-2009	Repeal	2-1-2009
340-228-0671	12-31-2008	Repeal	2-1-2009	407-007-0270	1-1-2009	Repeal	2-1-2009
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340-228-0676	12-31-2008	Repeal	2-1-2009	407-007-0310	1-1-2009	Repeal	2-1-2009
340-228-0678	12-31-2008	Repeal	2-1-2009	407-007-0320	1-1-2009	Amend	2-1-2009
340-230-0300	12-31-2008	Amend	2-1-2009	407-007-0330	1-1-2009	Amend	2-1-2009
340-230-0310	12-31-2008	Amend	2-1-2009	407-007-0340	1-1-2009	Amend	2-1-2009
340-230-0320	12-31-2008	Amend	2-1-2009	407-007-0350	1-1-2009	Amend	2-1-2009
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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

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410-120-0027	1-12-2009	Adopt(T)	2-1-2009	410-125-0400	12-1-2008	Amend	1-1-2009
410-120-1140	12-1-2008	Amend	1-1-2009	410-125-0600	12-1-2008	Amend	1-1-2009
410-120-1180	12-1-2008	Amend	1-1-2009	410-125-0640	12-1-2008	Amend	1-1-2009
410-120-1195	12-1-2008	Amend	1-1-2009	410-125-0720	12-1-2008	Amend	1-1-2009
410-120-1260	12-1-2008	Amend	1-1-2009	410-125-1020	1-1-2009	Amend	1-1-2009
410-120-1280	12-1-2008	Amend	1-1-2009	410-125-1070	12-1-2008	Amend	1-1-2009
410-120-1340	12-1-2008	Amend	1-1-2009	410-127-0080	12-1-2008	Amend	1-1-2009
410-120-1340	1-1-2009	Amend	1-1-2009	410-129-0080	12-1-2008	Amend	1-1-2009
410-121-0000	1-1-2009	Amend	1-1-2009	410-130-0180	12-1-2008	Amend	1-1-2009
410-121-0030	1-1-2009	Amend	1-1-2009	410-132-0100	12-1-2008	Amend	1-1-2009
410-121-0032	1-1-2009	Amend	1-1-2009	410-133-0040	12-28-2008	Amend	2-1-2009
410-121-0040	12-1-2008	Amend	1-1-2009	410-133-0090	12-28-2008	Amend	2-1-2009
410-121-0060	12-1-2008	Amend	1-1-2009	410-133-0100	12-28-2008	Amend	2-1-2009
410-121-0060	1-1-2009	Amend	1-1-2009	410-133-0140	12-28-2008	Amend	2-1-2009
410-121-0140	12-1-2008	Amend	1-1-2009	410-133-0220	12-28-2008	Amend	2-1-2009
410-121-0140	1-1-2009	Repeal	1-1-2009	410-133-0280	12-28-2008	Amend	2-1-2009
410-121-0150	12-1-2008	Amend	1-1-2009	410-136-0240	12-1-2008	Amend	1-1-2009
410-121-0157	12-1-2008	Amend	1-1-2009	410-136-0260	12-1-2008	Amend	1-1-2009
410-121-0185	1-1-2009	Amend	1-1-2009	410-136-0300	12-1-2008	Amend	1-1-2009
410-121-0200	12-1-2008	Amend	1-1-2009	410-138-0000	12-28-2008	Amend	2-1-2009
410-121-0300	1-1-2009	Amend	1-1-2009	410-138-0005	12-28-2008	Adopt	2-1-2009
410-121-0320	12-1-2008	Amend	1-1-2009	410-138-0007	12-28-2008	Adopt	2-1-2009
410-121-0625	1-1-2009	Amend	1-1-2009	410-138-0009	12-28-2008	Adopt	2-1-2009
410-122-0040	12-1-2008	Amend	1-1-2009	410-138-0020	12-28-2008	Amend	2-1-2009
410-122-0182	1-1-2009	Amend	1-1-2009	410-138-0080	12-28-2008	Amend	2-1-2009
410-122-0200	1-1-2009	Amend	1-1-2009	410-138-0300	12-28-2008	Amend	2-1-2009
410-122-0202	1-1-2009	Amend(T)	2-1-2009	410-138-0320	12-28-2008	Amend	2-1-2009
410-122-0203	1-1-2009	Amend	1-1-2009	410-138-0380	12-28-2008	Amend	2-1-2009
410-122-0204	1-1-2009	Amend	1-1-2009	410-138-0500	12-28-2008	Amend	2-1-2009
410-122-0211	1-1-2009	Adopt	1-1-2009	410-138-0520	12-28-2008	Amend	2-1-2009
410-122-0330	1-1-2009	Amend	1-1-2009	410-138-0560	12-28-2008	Amend	2-1-2009
410-122-0340	1-1-2009	Amend	1-1-2009	410-138-0600	12-28-2008	Amend	2-1-2009
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(T)	1-1-2009	Repeal	1-1-2009
410-125-0020	1-1-2009	Amend	1-1-2009	410-146-0021	12-1-2008	Amend	1-1-2009
410-125-0041	1-1-2009	Amend	1-1-2009	410-146-0040	1-1-2009	Amend	1-1-2009
410-125-0045	1-1-2009	Amend	1-1-2009	410-146-0060	12-1-2008	Amend	1-1-2009
410-125-0080	1-1-2009	Amend	1-1-2009	410-146-0080	12-1-2008	Amend	1-1-2009
410-125-0085	1-1-2009	Amend	1-1-2009	410-146-0085	12-1-2008	Amend	1-1-2009
410-125-0125	12-1-2008	Amend	1-1-2009	410-146-0086	12-1-2008	Amend	1-1-2009
410-125-0155	1-1-2009	Amend	1-1-2009	410-146-0100	12-1-2008	Amend	1-1-2009
410-125-0181	1-1-2009	Amend	1-1-2009	410-146-0120	12-1-2008	Amend	1-1-2009
410-125-0195	1-1-2009	Amend	1-1-2009	410-146-0130	12-1-2008	Amend	1-1-2009
410-125-0210	12-1-2008	Amend	1-1-2009	410-146-0140	12-1-2008	Amend	1-1-2009
410-125-0220	12-1-2008	Amend	1-1-2009	410-146-0340	12-1-2008	Amend	1-1-2009

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410-146-0440	12-1-2008	Amend	1-1-2009	436-060-0025	1-1-2009	Amend	1-1-2009
410-147-0020	12-1-2008	Amend	1-1-2009	436-060-0035	1-1-2009	Amend	1-1-2009
410-147-0040	1-1-2009	Amend	1-1-2009	436-060-0060	1-1-2009	Amend	1-1-2009
410-147-0060	12-1-2008	Amend	1-1-2009	436-060-0105	1-1-2009	Amend	1-1-2009
410-147-0120	12-1-2008	Amend	1-1-2009	436-060-0135	1-1-2009	Amend	1-1-2009
410-147-0125	12-1-2008	Amend	1-1-2009	436-060-0137	1-1-2009	Amend	1-1-2009
410-147-0140	12-1-2008	Amend	1-1-2009	436-060-0147	1-1-2009	Amend	1-1-2009
410-147-0160	12-1-2008	Amend	1-1-2009	436-060-0150	1-1-2009	Amend	1-1-2009
410-147-0180	12-1-2008	Amend	1-1-2009	436-060-0153	1-1-2009	Adopt	1-1-2009
410-147-0200	12-1-2008	Amend	1-1-2009	436-060-0155	1-1-2009	Amend	1-1-2009
410-147-0220	12-1-2008	Amend	1-1-2009	436-060-0500	1-1-2009	Amend	1-1-2009
410-147-0320	12-1-2008	Amend	1-1-2009	437-002-0187	12-31-2008	Amend	2-1-2009
410-147-0340	12-1-2008	Amend	1-1-2009	441-865-0025	12-10-2008	Adopt	1-1-2009
410-147-0360	12-1-2008	Amend	1-1-2009	442-001-0000	1-1-2009	Amend	2-1-2009
410-147-0460	12-1-2008	Amend	1-1-2009	442-001-0005	1-1-2009	Amend	2-1-2009
410-147-0480	12-1-2008	Amend	1-1-2009	442-001-0010	1-1-2009	Repeal	2-1-2009
410-147-0540	12-1-2008	Amend	1-1-2009	442-001-0015	1-1-2009	Repeal	2-1-2009
410-147-0560	12-1-2008	Amend	1-1-2009	442-001-0050	1-1-2009	Adopt	2-1-2009
410-147-0610	12-1-2008	Amend	1-1-2009	442-001-0060	1-1-2009	Adopt	2-1-2009
410-147-0620	12-1-2008	Amend	1-1-2009	442-001-0070	1-1-2009	Adopt	2-1-2009
411-030-0002	1-1-2009	Amend	2-1-2009	442-001-0080	1-1-2009	Adopt	2-1-2009
411-030-0020	1-1-2009	Amend	2-1-2009	442-001-0090	1-1-2009	Adopt	2-1-2009
411-030-0033	1-1-2009	Amend	2-1-2009	442-001-0100	1-1-2009	Adopt	2-1-2009
411-030-0040	1-1-2009	Amend	2-1-2009	442-001-0110	1-1-2009	Adopt	2-1-2009
411-030-0050	1-1-2009	Amend	2-1-2009	442-001-0120	1-1-2009	Adopt	2-1-2009
411-030-0055	1-1-2009	Amend	2-1-2009	442-001-0130	1-1-2009	Adopt	2-1-2009
411-030-0070	1-1-2009	Amend	2-1-2009	442-001-0140	1-1-2009	Adopt	2-1-2009
411-030-0080	1-1-2009	Amend	2-1-2009	442-001-0150	1-1-2009	Adopt	2-1-2009
411-030-0090	1-1-2009	Amend	2-1-2009	442-001-0160	1-1-2009	Adopt	2-1-2009
411-030-0100	1-1-2009	Amend	2-1-2009	459-005-0525	11-26-2008	Amend	1-1-2009
411-054-0005	1-1-2009	Amend	2-1-2009	459-005-0535	11-26-2008	Amend	1-1-2009
411-054-0008	1-1-2009	Repeal	2-1-2009	459-005-0545	11-26-2008	Amend	1-1-2009
411-054-0012	1-1-2009	Amend	2-1-2009	459-010-0010	11-26-2008	Amend	1-1-2009
411-054-0105	1-1-2009	Amend	2-1-2009	459-013-0260	11-26-2008	Amend	1-1-2009
423-001-0006	12-12-2008	Amend(T)	1-1-2009	459-050-0037	11-26-2008	Amend	1-1-2009
423-010-0023	12-12-2008	Amend	1-1-2009	459-075-0175	11-26-2008	Adopt	1-1-2009
436-009-0005	1-1-2009	Amend	1-1-2009	461-001-0000	1-1-2009	Amend	2-1-2009
436-009-0008	1-1-2009	Amend	1-1-2009	461-001-0025	1-1-2009	Amend	2-1-2009
436-009-0018	1-1-2009	Adopt	1-1-2009	461-101-0010	1-1-2009	Amend	2-1-2009
436-009-0020	1-1-2009	Amend	1-1-2009	461-110-0330	1-1-2009	Amend	2-1-2009
436-009-0022	1-1-2009	Amend	1-1-2009	461-110-0350	1-1-2009	Amend	2-1-2009
436-009-0030	1-1-2009	Amend	1-1-2009	461-115-0050	1-1-2009	Amend	2-1-2009
436-009-0035	1-1-2009	Amend	1-1-2009	461-115-0530	1-1-2009	Amend	2-1-2009
436-009-0040	1-1-2009	Amend	1-1-2009	461-120-0125	1-1-2009	Amend(T)	2-1-2009
436-009-0070	1-1-2009	Amend	1-1-2009	461-130-0335	1-1-2009	Amend	2-1-2009
436-009-0080	1-1-2009	Amend	1-1-2009	461-135-0010	1-1-2009	Amend	2-1-2009
436-009-0090	1-1-2009	Amend	1-1-2009	461-135-0075	1-1-2009	Amend	2-1-2009
436-009-0095	1-1-2009	Adopt	1-1-2009	461-135-0075(T)	1-1-2009	Repeal	2-1-2009
436-009-0100	1-1-2009	Amend	1-1-2009	461-135-0085	1-1-2009	Amend	2-1-2009
436-015-0007	1-1-2009	Adopt	1-1-2009	461-135-0089	1-1-2009	Amend	2-1-2009
436-015-0120	1-1-2009	Amend	1-1-2009	461-135-0730	1-1-2009	Amend	2-1-2009
436-060-0005	1-1-2009	Amend	1-1-2009	461-135-0745	1-1-2009	Amend	2-1-2009
436-060-0009	1-1-2009	Amend	1-1-2009	461-135-0780	1-1-2009	Amend	2-1-2009
436-060-0010	1-1-2009	Amend	1-1-2009	461-135-0832	1-1-2009	Amend	2-1-2009
436-060-0015	1-1-2009	Amend	1-1-2009	461-135-1102	1-1-2009	Amend	2-1-2009
436-060-0017	1-1-2009	Amend	1-1-2009	461-135-1195	1-1-2009	Amend	2-1-2009
436-060-0018	1-1-2009	Amend	1-1-2009	461-135-1250	1-1-2009	Amend(T)	2-1-2009



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461-145-0540	1-1-2009	Amend	2-1-2009	471-031-0195	12-1-2008	Adopt	1-1-2009
461-145-0820	1-1-2009	Amend	2-1-2009	471-031-0200	12-1-2008	Adopt	1-1-2009
461-145-0830	1-1-2009	Amend	2-1-2009	471-031-0205	12-1-2008	Adopt	1-1-2009
461-145-0840	1-1-2009	Repeal	2-1-2009	471-031-0210	12-1-2008	Adopt	1-1-2009
461-150-0048	1-1-2009	Repeal	2-1-2009	471-031-0215	12-1-2008	Adopt	1-1-2009
461-150-0049	1-1-2009	Amend	2-1-2009	471-031-0220	12-1-2008	Adopt	1-1-2009
461-150-0050	1-1-2009	Amend	2-1-2009	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	581-001-0100	12-19-2008	Amend	2-1-2009
461-155-0295	1-1-2009	Amend	2-1-2009	581-022-0610	12-19-2008	Amend	2-1-2009
461-155-0300	1-1-2009	Amend	2-1-2009	581-022-0711	12-19-2008	Adopt	2-1-2009
461-155-0320	1-1-2009	Amend	2-1-2009	582-001-0003	12-19-2008	Amend(T)	2-1-2009
461-155-0500	1-1-2009	Amend	2-1-2009	582-001-0005	12-19-2008	Amend(T)	2-1-2009
461-155-0500(T)	1-1-2009	Repeal	2-1-2009	582-001-0010	12-19-2008	Amend(T)	2-1-2009
461-155-0526	1-1-2009	Amend	2-1-2009	582-100-0040	12-19-2008	Amend(T)	2-1-2009
461-155-0526(T)	1-1-2009	Repeal	2-1-2009	589-020-0225	12-29-2008	Amend	2-1-2009
461-155-0600	1-1-2009	Amend	2-1-2009	619-005-0010	12-17-2008	Adopt	2-1-2009
461-155-0600(T)	1-1-2009	Repeal	2-1-2009	619-005-0020	12-17-2008	Adopt	2-1-2009
461-155-0610	1-1-2009	Amend	2-1-2009	619-005-0030	12-17-2008	Adopt	2-1-2009
461-155-0610(T)	1-1-2009	Repeal	2-1-2009	619-005-0040	12-17-2008	Adopt	2-1-2009
461-155-0700	1-1-2009	Adopt	2-1-2009	619-005-0050	12-17-2008	Adopt	2-1-2009
461-155-0700(T)	1-1-2009	Repeal	2-1-2009	619-005-0060	12-17-2008	Adopt	2-1-2009
461-155-0710	1-1-2009	Adopt	2-1-2009	620-010-0020	3-1-2009	Amend	2-1-2009
461-155-0710(T)	1-1-2009	Repeal	2-1-2009	620-010-0020(T)	3-1-2009	Repeal	2-1-2009
461-160-0100	1-1-2009	Amend	2-1-2009	629-022-0030	2-1-2009	Amend	2-1-2009
461-160-0410	1-1-2009	Amend	2-1-2009	629-022-0035	2-1-2009	Adopt	2-1-2009
461-160-0550	1-1-2009	Amend(T)	2-1-2009	629-022-0040	2-1-2009	Amend	2-1-2009
461-160-0551	1-1-2009	Amend(T)	2-1-2009	629-022-0050	2-1-2009	Adopt	2-1-2009
461-160-0580	1-1-2009	Amend	2-1-2009	629-022-0060	2-1-2009	Adopt	2-1-2009
461-160-0620	1-1-2009	Amend	2-1-2009	629-022-0070	2-1-2009	Adopt	2-1-2009
461-165-0030	1-1-2009	Amend	2-1-2009	629-022-0080	2-1-2009	Adopt	2-1-2009
461-170-0010	1-1-2009	Amend	2-1-2009	629-022-0100	2-1-2009	Repeal	2-1-2009
461-170-0015	1-1-2009	Am. & Ren.	2-1-2009	629-022-0110	2-1-2009	Amend	2-1-2009
461-170-0020	1-1-2009	Am. & Ren.	2-1-2009	629-022-0120	2-1-2009	Amend	2-1-2009
461-170-0025	1-1-2009	Am. & Ren.	2-1-2009	629-022-0130	2-1-2009	Amend	2-1-2009
461-170-0030	1-1-2009	Am. & Ren.	2-1-2009	629-022-0140	2-1-2009	Amend	2-1-2009
461-170-0035	1-1-2009	Am. & Ren.	2-1-2009	629-022-0150	2-1-2009	Amend	2-1-2009
461-170-0100	1-1-2009	Amend	2-1-2009	629-022-0160	2-1-2009	Amend	2-1-2009
461-170-0101	1-1-2009	Amend	2-1-2009	629-022-0200	2-1-2009	Amend	2-1-2009
461-170-0102	1-1-2009	Amend	2-1-2009	629-022-0210	2-1-2009	Amend	2-1-2009
461-170-0120	1-1-2009	Amend	2-1-2009	629-022-0220	2-1-2009	Amend	2-1-2009
461-170-0150	1-1-2009	Amend	2-1-2009	629-022-0230	2-1-2009	Amend	2-1-2009
461-170-0160	1-1-2009	Amend	2-1-2009	629-022-0250	2-1-2009	Amend	2-1-2009
461-170-0170	1-1-2009	Repeal	2-1-2009	629-022-0300	2-1-2009	Amend	2-1-2009
461-170-0200	1-1-2009	Amend	2-1-2009	629-022-0320	2-1-2009	Amend	2-1-2009
461-175-0220	1-1-2009	Amend	2-1-2009	629-022-0380	2-1-2009	Amend	2-1-2009
461-175-0240	1-1-2009	Amend	2-1-2009	629-022-0390	2-1-2009	Amend	2-1-2009
461-175-0270	1-1-2009	Amend	2-1-2009	629-022-0400	2-1-2009	Amend	2-1-2009
461-175-0280	1-1-2009	Amend	2-1-2009	629-022-0410	2-1-2009	Amend	2-1-2009
461-175-0305	1-1-2009	Amend	2-1-2009	629-022-0500	2-1-2009	Repeal	2-1-2009
461-180-0005	1-1-2009	Amend	2-1-2009	629-022-0600	2-1-2009	Repeal	2-1-2009
461-180-0090	1-1-2009	Amend	2-1-2009	629-022-0700	2-1-2009	Repeal	2-1-2009
461-180-0125	1-1-2009	Amend	2-1-2009	629-022-0800	2-1-2009	Adopt	2-1-2009
471-010-0025	12-1-2008	Adopt	1-1-2009	629-022-0810	2-1-2009	Adopt	2-1-2009
471-010-0045	12-1-2008	Adopt	1-1-2009	629-022-0820	2-1-2009	Adopt	2-1-2009
471-031-0072	12-1-2008	Amend	1-1-2009	629-022-0830	2-1-2009	Adopt	2-1-2009
471-031-0151	12-1-2008	Amend	1-1-2009	629-022-0840	2-1-2009	Adopt	2-1-2009

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635-001-0050	1-14-2009	Amend(T)	2-1-2009	635-006-0810	11-21-2008	Amend	1-1-2009
635-004-0014	11-21-2008	Amend	1-1-2009	635-006-0850	12-17-2008	Amend	2-1-2009
635-004-0016	1-1-2009	Amend(T)	2-1-2009	635-006-0910	12-17-2008	Amend	2-1-2009
635-004-0019	12-4-2008	Amend(T)	1-1-2009	635-006-1035	11-21-2008	Amend	1-1-2009
635-004-0019	1-5-2009	Amend(T)	2-1-2009	635-006-1035	12-17-2008	Amend	2-1-2009
635-004-0019(T)	12-4-2008	Suspend	1-1-2009	635-006-1075	11-21-2008	Amend	1-1-2009
635-004-0020	11-21-2008	Amend	1-1-2009	635-006-1085	12-17-2008	Amend	2-1-2009
635-004-0027	1-1-2009	Amend(T)	2-1-2009	635-008-0145	1-15-2009	Amend	2-1-2009
635-004-0033	1-1-2009	Amend(T)	2-1-2009	635-010-0170	12-9-2008	Amend(T)	1-1-2009
635-004-0035	11-21-2008	Amend	1-1-2009	635-011-0100	1-1-2009	Amend	2-1-2009
635-004-0048	11-21-2008	Amend	1-1-2009	635-013-0003	1-1-2009	Amend	2-1-2009
635-004-0050	11-21-2008	Amend	1-1-2009	635-013-0004	1-1-2009	Amend	2-1-2009
635-004-0060	11-21-2008	Amend	1-1-2009	635-014-0080	1-1-2009	Amend	2-1-2009
635-004-0090	1-1-2009	Amend(T)	2-1-2009	635-014-0090	1-1-2009	Amend	2-1-2009
635-004-0135	11-21-2008	Amend	1-1-2009	635-016-0080	1-1-2009	Amend	2-1-2009
635-004-0170	11-21-2008	Amend	1-1-2009	635-016-0090	1-1-2009	Amend	2-1-2009
635-005-0001	11-21-2008	Amend	1-1-2009	635-017-0080	1-1-2009	Amend	2-1-2009
635-005-0005	11-21-2008	Amend	1-1-2009	635-017-0090	1-1-2009	Amend	2-1-2009
635-005-0005	12-17-2008	Amend	2-1-2009	635-017-0095	1-1-2009	Amend	2-1-2009
635-005-0016	11-21-2008	Amend	1-1-2009	635-017-0095	1-1-2009	Amend(T)	2-1-2009
635-005-0045	11-21-2008	Amend	1-1-2009	635-018-0080	1-1-2009	Amend	2-1-2009
635-005-0047	11-21-2008	Amend	1-1-2009	635-018-0090	1-1-2009	Amend	2-1-2009
635-005-0048	11-21-2008	Amend	1-1-2009	635-019-0080	1-1-2009	Amend	2-1-2009
635-005-0055	11-21-2008	Amend	1-1-2009	635-019-0090	1-1-2009	Amend	2-1-2009
635-005-0055	12-1-2008	Amend(T)	1-1-2009	635-021-0080	1-1-2009	Amend	2-1-2009
635-005-0064	12-17-2008	Amend	2-1-2009	635-021-0090	1-1-2009	Amend	2-1-2009
635-005-0065	11-21-2008	Amend	1-1-2009	635-023-0080	1-1-2009	Amend	2-1-2009
635-005-0065	12-17-2008	Amend	2-1-2009	635-023-0090	1-1-2009	Amend	2-1-2009
635-005-0067	12-17-2008	Amend	2-1-2009	635-023-0095	1-1-2009	Amend	2-1-2009
635-005-0068	12-17-2008	Adopt	2-1-2009	635-023-0095	1-1-2009	Amend(T)	2-1-2009
635-005-0069	12-17-2008	Adopt	2-1-2009	635-023-0125	1-1-2009	Amend	2-1-2009
635-005-0084	11-21-2008	Amend	1-1-2009	635-023-0128	1-1-2009	Amend	2-1-2009
635-005-0090	11-21-2008	Amend	1-1-2009	635-023-0130	1-1-2009	Amend	2-1-2009
635-005-0095	11-21-2008	Amend	1-1-2009	635-023-0134	1-1-2009	Amend	2-1-2009
635-005-0100	11-21-2008	Amend	1-1-2009	635-039-0080	1-1-2009	Amend	2-1-2009
635-005-0135	11-21-2008	Amend	1-1-2009	635-039-0085	1-1-2009	Amend	2-1-2009
635-005-0140	11-21-2008	Amend	1-1-2009	635-039-0090	1-1-2009	Amend	2-1-2009
635-005-0145	11-21-2008	Amend	1-1-2009	635-041-0005	11-21-2008	Amend	1-1-2009
635-005-0180	11-21-2008	Amend	1-1-2009	635-041-0010	11-21-2008	Amend	1-1-2009
635-006-0001	11-21-2008	Amend	1-1-2009	635-041-0030	11-21-2008	Amend	1-1-2009
635-006-0132	11-21-2008	Amend	1-1-2009	635-041-0040	11-21-2008	Amend	1-1-2009
635-006-0133	11-21-2008	Amend	1-1-2009	635-041-0045	11-21-2008	Amend	1-1-2009
635-006-0145	11-21-2008	Amend	1-1-2009	635-041-0060	11-21-2008	Amend	1-1-2009
635-006-0150	11-21-2008	Amend	1-1-2009	635-041-0061	11-21-2008	Amend	1-1-2009
635-006-0165	11-21-2008	Amend	1-1-2009	635-041-0063	11-21-2008	Amend	1-1-2009
635-006-0200	11-21-2008	Amend	1-1-2009	635-041-0065	11-21-2008	Amend	1-1-2009
635-006-0205	11-21-2008	Amend	1-1-2009	635-041-0510	11-21-2008	Amend	1-1-2009
635-006-0207	11-21-2008	Amend	1-1-2009	635-041-0520	11-21-2008	Amend	1-1-2009
635-006-0210	11-21-2008	Amend	1-1-2009	635-041-0600	11-21-2008	Amend	1-1-2009
635-006-0211	11-21-2008	Amend	1-1-2009	635-042-0001	11-21-2008	Amend	1-1-2009
635-006-0213	11-21-2008	Amend	1-1-2009	635-042-0007	11-21-2008	Amend	1-1-2009
635-006-0215	11-21-2008	Amend	1-1-2009	635-042-0022	11-21-2008	Amend	1-1-2009
635-006-0225	11-21-2008	Amend	1-1-2009	635-042-0110	11-21-2008	Amend	1-1-2009
635-006-0230	11-21-2008	Amend	1-1-2009	635-042-0130	1-1-2009	Amend(T)	2-1-2009
635-006-0232	1-13-2009	Amend	2-1-2009	635-042-0135	1-1-2009	Amend(T)	2-1-2009
635-006-0235	11-21-2008	Amend	1-1-2009	635-045-0000	1-1-2009	Amend	2-1-2009
635-006-0412	11-21-2008	Amend	1-1-2009	635-045-0002	1-1-2009	Amend	2-1-2009

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635-049-0210	1-1-2009	Repeal	2-1-2009	735-062-0020(T)	1-1-2009	Repeal	1-1-2009
635-049-0235	1-1-2009	Adopt	2-1-2009	735-064-0110	12-15-2008	Amend	1-1-2009
635-055-0035	1-1-2009	Amend	2-1-2009	736-004-0062	12-15-2008	Amend	1-1-2009
635-055-0037	1-1-2009	Adopt	2-1-2009	736-010-0040	12-15-2008	Amend	1-1-2009
635-060-0000	1-1-2009	Amend	2-1-2009	736-010-0055	12-15-2008	Amend	1-1-2009
635-060-0009	1-1-2009	Amend	2-1-2009	736-018-0045	2-1-2009	Amend	2-1-2009
635-060-0055	1-1-2009	Amend	2-1-2009	736-146-0010	12-15-2008	Amend	1-1-2009
635-065-0001	1-1-2009	Amend	2-1-2009	736-146-0012	12-15-2008	Amend	1-1-2009
635-065-0401	1-1-2009	Amend	2-1-2009	736-146-0015	12-15-2008	Amend	1-1-2009
635-065-0625	1-1-2009	Amend	2-1-2009	736-146-0020	12-15-2008	Amend	1-1-2009
635-065-0740	1-1-2009	Amend	2-1-2009	736-146-0025	12-15-2008	Repeal	1-1-2009
635-065-0760	1-1-2009	Amend	2-1-2009	736-146-0030	12-15-2008	Repeal	1-1-2009
635-065-0765	1-9-2009	Amend	2-1-2009	736-146-0040	12-15-2008	Repeal	1-1-2009
635-066-0000	1-1-2009	Amend	2-1-2009	736-146-0050	12-15-2008	Amend	1-1-2009
635-066-0010	1-1-2009	Amend	2-1-2009	736-146-0060	12-15-2008	Amend	1-1-2009
635-066-0020	1-1-2009	Amend	2-1-2009	736-146-0070	12-15-2008	Amend	1-1-2009
635-067-0000	1-1-2009	Amend	2-1-2009	736-146-0080	12-15-2008	Amend	1-1-2009
635-067-0004	1-1-2009	Amend	2-1-2009	736-146-0090	12-15-2008	Amend	1-1-2009
635-072-0000	1-1-2009	Amend	2-1-2009	736-146-0100	12-15-2008	Amend	1-1-2009
635-080-0050	1-1-2009	Amend	2-1-2009	736-146-0110	12-15-2008	Amend	1-1-2009
635-080-0051	1-1-2009	Amend	2-1-2009	736-146-0120	12-15-2008	Amend	1-1-2009
635-080-0062	1-1-2009	Amend	2-1-2009	736-146-0130	12-15-2008	Amend	1-1-2009
635-080-0063	1-1-2009	Amend	2-1-2009	736-146-0140	12-15-2008	Amend	1-1-2009
635-195-0000	11-24-2008	Adopt	1-1-2009	736-147-0010	12-15-2008	Amend	1-1-2009
635-195-0010	11-24-2008	Adopt	1-1-2009	736-147-0020	12-15-2008	Repeal	1-1-2009
660-033-0120	1-2-2009	Amend	2-1-2009	736-147-0030	12-15-2008	Amend	1-1-2009
660-033-0130	1-2-2009	Amend	2-1-2009	736-147-0040	12-15-2008	Adopt	1-1-2009
690-200-0050	1-2-2009	Amend	2-1-2009	736-147-0050	12-15-2008	Amend	1-1-2009
690-205-0200	1-2-2009	Amend	2-1-2009	736-147-0060	12-15-2008	Amend	1-1-2009
690-205-0205	1-2-2009	Adopt	2-1-2009	736-147-0070	12-15-2008	Adopt	1-1-2009
690-215-0005	1-2-2009	Amend	2-1-2009	736-148-0010	12-15-2008	Amend	1-1-2009
690-215-0006	1-2-2009	Adopt	2-1-2009	736-148-0020	12-15-2008	Amend	1-1-2009
690-215-0025	1-2-2009	Adopt	2-1-2009	736-149-0010	12-15-2008	Amend	1-1-2009
690-215-0030	1-2-2009	Amend	2-1-2009	740-015-0020	12-15-2008	Amend	1-1-2009
690-215-0035	1-2-2009	Adopt	2-1-2009	740-015-0040	12-15-2008	Amend	1-1-2009
690-215-0040	1-2-2009	Amend	2-1-2009	801-001-0035	1-1-2009	Amend	2-1-2009
690-220-0030	1-2-2009	Amend	2-1-2009	801-010-0010	1-1-2009	Amend	2-1-2009
690-220-0040	1-2-2009	Amend	2-1-2009	801-010-0050	1-1-2009	Amend	2-1-2009
690-220-0050	1-2-2009	Amend	2-1-2009	801-010-0115	1-1-2009	Amend	2-1-2009
690-220-0060	1-2-2009	Repeal	2-1-2009	801-010-0345	1-1-2009	Amend	2-1-2009
690-220-0070	1-2-2009	Amend	2-1-2009	801-030-0020	1-1-2009	Amend	2-1-2009
690-220-0080	1-2-2009	Amend	2-1-2009	801-040-0010	1-1-2009	Amend	2-1-2009
690-220-0115	1-2-2009	Adopt	2-1-2009	801-040-0090	1-1-2009	Amend	2-1-2009
690-240-0010	1-2-2009	Amend	2-1-2009	811-015-0025	12-23-2008	Amend	2-1-2009
690-240-0035	1-2-2009	Amend	2-1-2009	812-002-0060	11-20-2008	Amend	1-1-2009
690-240-0375	1-2-2009	Amend	2-1-2009	812-002-0420	11-20-2008	Amend	1-1-2009
690-240-0385	1-2-2009	Adopt	2-1-2009	812-003-0450	11-20-2008	Repeal	1-1-2009
734-071-0010	12-15-2008	Amend	1-1-2009	812-005-0280	11-20-2008	Amend	1-1-2009
734-073-0110	12-15-2008	Amend	1-1-2009	812-005-0800	11-20-2008	Amend	1-1-2009
734-073-0120	12-15-2008	Repeal	1-1-2009	812-006-0100	11-20-2008	Amend	1-1-2009
735-010-0130	1-1-2009	Amend	1-1-2009	812-006-0200	11-20-2008	Amend	1-1-2009
735-010-0130(T)	1-1-2009	Repeal	1-1-2009	812-020-0050	11-20-2008	Adopt	1-1-2009
735-062-0005	1-1-2009	Amend	1-1-2009	812-020-0055	11-20-2008	Adopt	1-1-2009
735-062-0014	1-1-2009	Adopt	1-1-2009	812-020-0060	11-20-2008	Adopt	1-1-2009
735-062-0014(T)	1-1-2009	Repeal	1-1-2009	812-020-0062	11-20-2008	Adopt	1-1-2009
735-062-0015	1-1-2009	Amend	1-1-2009	812-020-0065	11-20-2008	Adopt	1-1-2009
735-062-0015(T)	1-1-2009	Repeal	1-1-2009	812-020-0070	11-20-2008	Adopt	1-1-2009



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812-020-0080	11-20-2008	Adopt	1-1-2009	836-051-0755	12-9-2008	Adopt	1-1-2009
812-020-0082	11-20-2008	Adopt	1-1-2009	836-051-0760	12-9-2008	Adopt	1-1-2009
812-020-0085	11-20-2008	Adopt	1-1-2009	836-051-0765	12-9-2008	Adopt	1-1-2009
812-020-0087	11-20-2008	Adopt	1-1-2009	836-051-0770	12-9-2008	Adopt	1-1-2009
812-020-0090	11-20-2008	Adopt	1-1-2009	836-051-0775	12-9-2008	Adopt	1-1-2009
817-030-0005	12-1-2008	Amend(T)	1-1-2009	836-072-0001	12-10-2008	Adopt	1-1-2009
817-030-0015	12-1-2008	Amend(T)	1-1-2009	836-072-0005	12-10-2008	Adopt	1-1-2009
817-030-0020	12-1-2008	Amend(T)	1-1-2009	836-072-0010	12-10-2008	Adopt	1-1-2009
817-030-0040	12-1-2008	Amend(T)	1-1-2009	836-072-0015	12-10-2008	Adopt	1-1-2009
817-030-0045	12-1-2008	Amend(T)	1-1-2009	836-072-0020	12-10-2008	Adopt	1-1-2009
817-030-0065	12-1-2008	Amend(T)	1-1-2009	836-072-0025	12-10-2008	Adopt	1-1-2009
817-030-0100	12-1-2008	Suspend	1-1-2009	836-072-0030	12-10-2008	Adopt	1-1-2009
817-035-0030	12-1-2008	Amend(T)	1-1-2009	836-072-0035	12-10-2008	Adopt	1-1-2009
820-010-0215	12-12-2008	Amend	1-1-2009	836-072-0040	12-10-2008	Adopt	1-1-2009
833-020-0050	12-26-2008	Amend	2-1-2009	836-072-0045	12-10-2008	Adopt	1-1-2009
833-020-0164	12-26-2008	Amend	2-1-2009	837-040-0001	12-31-2008	Amend	2-1-2009
833-025-0050	12-26-2008	Amend	2-1-2009	837-040-0015	12-31-2008	Adopt	2-1-2009
833-030-0001	12-26-2008	Amend	2-1-2009	837-040-0020	12-31-2008	Amend	2-1-2009
833-030-0010	12-26-2008	Amend	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
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	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
836-043-0036	1-1-2009	Repeal	1-1-2009	839-003-0205	12-5-2008	Amend	1-1-2009
836-043-0037	1-1-2009	Repeal	1-1-2009	839-003-0210	12-5-2008	Amend	1-1-2009
836-043-0041	1-1-2009	Amend	1-1-2009	839-003-0215	12-5-2008	Amend	1-1-2009
836-043-0044	1-1-2009	Amend	1-1-2009	839-003-0220	12-5-2008	Amend	1-1-2009
836-043-0046	1-1-2009	Amend	1-1-2009	839-003-0225	12-5-2008	Amend	1-1-2009
836-043-0048	1-1-2009	Amend	1-1-2009	839-003-0230	12-5-2008	Amend	1-1-2009
836-043-0050	1-1-2009	Amend	1-1-2009	839-003-0235	12-5-2008	Amend	1-1-2009
836-043-0053	1-1-2009	Amend	1-1-2009	839-003-0240	12-5-2008	Amend	1-1-2009
836-043-0060	1-1-2009	Amend	1-1-2009	839-003-0245	12-5-2008	Amend	1-1-2009
836-043-0062	1-1-2009	Amend	1-1-2009	839-005-0000	12-5-2008	Amend	1-1-2009
836-043-0064	1-1-2009	Amend	1-1-2009	839-005-0003	12-5-2008	Amend	1-1-2009
836-043-0066	1-1-2009	Amend	1-1-2009	839-005-0010	12-5-2008	Amend	1-1-2009
836-043-0068	1-1-2009	Amend	1-1-2009	839-005-0016	12-5-2008	Amend	1-1-2009
836-043-0070	1-1-2009	Repeal	1-1-2009	839-005-0026	12-5-2008	Amend	1-1-2009
836-043-0071	1-1-2009	Adopt	1-1-2009	839-005-0195	12-5-2008	Amend	1-1-2009
836-043-0076	1-1-2009	Amend	1-1-2009	839-005-0200	12-5-2008	Amend	1-1-2009
836-043-0079	1-1-2009	Amend	1-1-2009	839-005-0205	12-5-2008	Amend	1-1-2009
836-043-0082	1-1-2009	Amend	1-1-2009	839-005-0220	12-5-2008	Amend	1-1-2009
836-043-0086	1-1-2009	Repeal	1-1-2009	839-020-0050	1-12-2009	Amend	2-1-2009
836-043-0087	1-1-2009	Adopt	1-1-2009	839-025-0700	12-1-2008	Amend	1-1-2009
836-043-0089	1-1-2009	Amend	1-1-2009	839-025-0700	12-29-2008	Amend	2-1-2009
836-051-0106	12-9-2008	Amend	1-1-2009	839-025-0700	1-1-2009	Amend	2-1-2009

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839-025-0700	1-12-2009	Amend	2-1-2009	863-015-0060	1-1-2009	Am. & Ren.	1-1-2009
845-010-0154	12-20-2008	Adopt	2-1-2009	863-015-0061	1-1-2009	Am. & Ren.	1-1-2009
845-020-0025	1-1-2009	Amend	2-1-2009	863-015-0062	1-1-2009	Am. & Ren.	1-1-2009
845-020-0035	1-1-2009	Amend	2-1-2009	863-015-0063	1-1-2009	Am. & Ren.	1-1-2009
848-010-0015	1-2-2009	Amend	2-1-2009	863-015-0065	1-1-2009	Am. & Ren.	1-1-2009
848-010-0020	1-2-2009	Amend	2-1-2009	863-015-0070	1-1-2009	Am. & Ren.	1-1-2009
848-010-0022	1-2-2009	Adopt	2-1-2009	863-015-0075	1-1-2009	Am. & Ren.	1-1-2009
848-010-0026	1-2-2009	Amend	2-1-2009	863-015-0076	1-1-2009	Am. & Ren.	1-1-2009
848-010-0044	1-2-2009	Amend	2-1-2009	863-015-0080	1-1-2009	Am. & Ren.	1-1-2009
848-015-0030	1-2-2009	Amend	2-1-2009	863-015-0085	1-1-2009	Am. & Ren.	1-1-2009
848-020-0030	1-2-2009	Amend	2-1-2009	863-015-0095	1-1-2009	Am. & Ren.	1-1-2009
848-020-0060	1-2-2009	Amend	2-1-2009	863-015-0100	1-1-2009	Am. & Ren.	1-1-2009
848-035-0020	1-2-2009	Amend	2-1-2009	863-015-0120	1-1-2009	Am. & Ren.	1-1-2009
848-035-0030	1-2-2009	Amend	2-1-2009	863-015-0130	1-1-2009	Amend	1-1-2009
848-035-0035	1-2-2009	Adopt	2-1-2009	863-015-0135	1-1-2009	Amend	1-1-2009
848-035-0040	1-2-2009	Amend	2-1-2009	863-015-0140	1-1-2009	Amend	1-1-2009
848-040-0100	1-2-2009	Amend	2-1-2009	863-015-0145	1-1-2009	Amend	1-1-2009
848-040-0117	1-2-2009	Amend	2-1-2009	863-015-0150	1-1-2009	Amend	1-1-2009
848-040-0145	1-2-2009	Amend	2-1-2009	863-015-0155	1-1-2009	Amend	1-1-2009
848-040-0160	1-2-2009	Amend	2-1-2009	863-015-0160	1-1-2009	Am. & Ren.	1-1-2009
848-040-0175	1-2-2009	Adopt	2-1-2009	863-015-0165	1-1-2009	Repeal	1-1-2009
848-045-0020	1-2-2009	Amend	2-1-2009	863-015-0175	1-1-2009	Amend	1-1-2009
850-060-0225	12-8-2008	Amend	1-1-2009	863-015-0180	1-1-2009	Repeal	1-1-2009
850-060-0226	12-8-2008	Amend	1-1-2009	863-015-0185	1-1-2009	Repeal	1-1-2009
851-050-0138	11-26-2008	Amend	1-1-2009	863-015-0186	1-1-2009	Amend	1-1-2009
851-056-0006	11-26-2008	Amend	1-1-2009	863-015-0188	1-1-2009	Adopt	1-1-2009
851-056-0022	11-26-2008	Amend	1-1-2009	863-015-0190	1-1-2009	Amend	1-1-2009
851-062-0020	11-26-2008	Amend	1-1-2009	863-015-0195	1-1-2009	Repeal	1-1-2009
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855-007-0020	1-5-2009	Adopt(T)	2-1-2009	863-015-0205	1-1-2009	Amend	1-1-2009
855-007-0030	1-5-2009	Adopt(T)	2-1-2009	863-015-0210	1-1-2009	Amend	1-1-2009
855-007-0040	1-5-2009	Adopt(T)	2-1-2009	863-015-0215	1-1-2009	Amend	1-1-2009
855-007-0050	1-5-2009	Adopt(T)	2-1-2009	863-015-0220	1-1-2009	Repeal	1-1-2009
855-007-0060	1-5-2009	Adopt(T)	2-1-2009	863-015-0225	1-1-2009	Am. & Ren.	1-1-2009
855-007-0080	1-5-2009	Adopt(T)	2-1-2009	863-015-0230	1-1-2009	Am. & Ren.	1-1-2009
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855-007-0100	1-5-2009	Adopt(T)	2-1-2009	863-015-0255	1-1-2009	Amend	1-1-2009
855-007-0110	1-5-2009	Adopt(T)	2-1-2009	863-015-0260	1-1-2009	Amend	1-1-2009
855-007-0120	1-5-2009	Adopt(T)	2-1-2009	863-015-0265	1-1-2009	Amend	1-1-2009
859-040-0010	12-17-2008	Amend(T)	2-1-2009	863-015-0275	1-1-2009	Amend	1-1-2009
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863-015-0005	1-1-2009	Am. & Ren.	1-1-2009	863-024-0050	1-1-2009	Adopt	1-1-2009
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863-015-0015	1-1-2009	Am. & Ren.	1-1-2009	863-024-0060	1-1-2009	Adopt	1-1-2009
863-015-0020	1-1-2009	Am. & Ren.	1-1-2009	863-024-0061	1-1-2009	Adopt	1-1-2009
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863-015-0035	1-1-2009	Am. & Ren.	1-1-2009	863-024-0065	1-1-2009	Adopt	1-1-2009
863-015-0040	1-1-2009	Am. & Ren.	1-1-2009	863-024-0070	1-1-2009	Adopt	1-1-2009
863-015-0045	1-1-2009	Am. & Ren.	1-1-2009	863-024-0075	1-1-2009	Adopt	1-1-2009
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863-024-0100	1-1-2009	Adopt	1-1-2009	863-050-0230	1-1-2009	Repeal	1-1-2009
863-025-0005	1-1-2009	Amend	1-1-2009	863-050-0235	1-1-2009	Repeal	1-1-2009
863-025-0010	1-1-2009	Amend	1-1-2009	863-050-0240	1-1-2009	Amend	1-1-2009
863-025-0015	1-1-2009	Amend	1-1-2009	875-010-0090	12-15-2008	Amend	1-1-2009
863-025-0020	1-1-2009	Amend	1-1-2009	875-020-0005	12-15-2008	Amend	1-1-2009
863-025-0025	1-1-2009	Amend	1-1-2009	875-030-0010	12-15-2008	Amend	1-1-2009
863-025-0030	1-1-2009	Amend	1-1-2009	875-030-0050	12-15-2008	Amend	1-1-2009
863-025-0035	1-1-2009	Amend	1-1-2009	918-008-0075	1-1-2009	Amend	2-1-2009
863-025-0040	1-1-2009	Amend	1-1-2009	918-008-0080	1-1-2009	Amend	2-1-2009
863-025-0045	1-1-2009	Amend	1-1-2009	918-008-0085	1-1-2009	Amend	2-1-2009
863-025-0050	1-1-2009	Amend	1-1-2009	918-008-0090	1-1-2009	Amend	2-1-2009
863-025-0055	1-1-2009	Amend	1-1-2009	918-008-0095	1-1-2009	Amend	2-1-2009
863-025-0060	1-1-2009	Amend	1-1-2009	918-008-0110	1-1-2009	Amend	2-1-2009
863-025-0065	1-1-2009	Amend	1-1-2009	918-008-0115	1-1-2009	Amend	2-1-2009
863-025-0070	1-1-2009	Amend	1-1-2009	918-020-0370	1-1-2009	Adopt	2-1-2009
863-025-0080	1-1-2009	Amend	1-1-2009	918-050-0000	1-1-2009	Amend	1-1-2009
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863-027-0005	1-1-2009	Adopt	1-1-2009	918-050-0020	1-1-2009	Amend	1-1-2009
863-050-0000	1-1-2009	Amend	1-1-2009	918-050-0030	1-1-2009	Amend	1-1-2009
863-050-0015	1-1-2009	Amend	1-1-2009	918-050-0100	1-1-2009	Amend	1-1-2009
863-050-0020	1-1-2009	Amend	1-1-2009	918-050-0110	1-1-2009	Amend	1-1-2009
863-050-0025	1-1-2009	Amend	1-1-2009	918-050-0120	1-1-2009	Amend	1-1-2009
863-050-0030	1-1-2009	Amend	1-1-2009	918-050-0130	1-1-2009	Amend	1-1-2009
863-050-0033	1-1-2009	Amend	1-1-2009	918-050-0140	1-1-2009	Amend	1-1-2009
863-050-0035	1-1-2009	Amend	1-1-2009	918-050-0150	1-1-2009	Amend	1-1-2009
863-050-0040	1-1-2009	Repeal	1-1-2009	918-050-0160	1-1-2009	Amend	1-1-2009
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863-050-0052	1-1-2009	Adopt	1-1-2009	918-225-0430	1-1-2009	Amend	2-1-2009
863-050-0055	1-1-2009	Amend	1-1-2009	918-225-0435	1-1-2009	Amend	2-1-2009
863-050-0060	1-1-2009	Amend	1-1-2009	918-225-0445	1-1-2009	Adopt	2-1-2009
863-050-0065	1-1-2009	Amend	1-1-2009	918-225-0450	1-1-2009	Amend	2-1-2009
863-050-0066	1-1-2009	Amend	1-1-2009	918-225-0570	1-1-2009	Amend	2-1-2009
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863-050-0151	1-1-2009	Repeal	1-1-2009	918-400-0455	1-1-2009	Amend	2-1-2009
863-050-0205	1-1-2009	Repeal	1-1-2009	918-400-0458	1-1-2009	Amend	2-1-2009
863-050-0210	1-1-2009	Repeal	1-1-2009	918-480-0150	1-1-2009	Adopt	2-1-2009
863-050-0215	1-1-2009	Repeal	1-1-2009	918-480-0150(T)	1-1-2009	Repeal	2-1-2009



