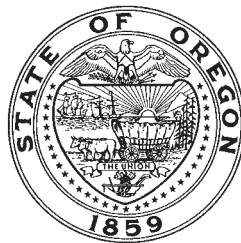


OREGON BULLETIN

Supplements the 2012 *Oregon Administrative Rules Compilation*

Volume 51, No. 8
August 1, 2012

For June 18, 2012–July 13, 2012



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KATE BROWN
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the *Oregon Administrative Rules Compilation* and the on-line *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual print publication containing the complete text of Oregon Administrative Rules (OARs) filed during the previous year through November 15, or the last workday before that if the 15th falls on a weekend or holiday. The *Oregon Bulletin* is a monthly on-line supplement that contains rule text amended after publication of the print *Compilation*, as well as proposed rulemaking and rulemaking hearing notices. The *Bulletin* also publishes certain non-OAR items such as Executive Orders of the Governor, Opinions of the Attorney General, and Department of Environmental Quality cleanup notices.

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.

How to Cite

Every administrative rule uses the same numbering sequence of a three-digit chapter number followed by a three-digit division number and a four-digit rule number (000-000-0000). Example: Oregon Administrative Rules, chapter 166, division 500, rule 0020 (short form: OAR 166-500-0020).

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 on-line *OAR Compilation* is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit, Secretary of State’s office by the 15th of the previous month, or by the last workday before the 15th if that date falls on a weekend or holiday. The annual printed *OAR Compilation* contains the full text of all rules filed during the previous year through November 15, or the last workday before that if the 15th falls on a weekend or holiday. Subsequent changes to individual administrative rules are listed by rule number in the OAR Revision Cumulative Index which is published monthly in the on-line *Oregon Bulletin*. These listings include the effective date, the specific rulemaking action, and the

issue of the *Bulletin* that contains the full text of the amended rule. The *Bulletin* contains the full text of permanent and temporary rules filed for publication.

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available on-line through the Oregon State Archives web site at <<http://arcweb.sos.state.or.us>>. Printed volumes of the *Compilation* are deposited in Oregon’s Public Documents Depository Libraries listed in OAR 543-070-0000. Complete sets and individual volumes of the *Compilation* 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

2011–2012 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts proposed rulemaking notices and administrative rule filings Monday through Friday, 8:00 am to 5:00 pm, 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 deadlines:

Submission Deadline — Publishing Date

December 15, 2011	January 1, 2012
January 13, 2012	February 1, 2012
February 15, 2012	March 1, 2012
March 15, 2012	April 1, 2012
April 13, 2012	May 1, 2012
May 15, 2012	June 1, 2012
June 15, 2012	July 1, 2012
July 13, 2012	August 1, 2012
August 15, 2012	September 1, 2012
September 14, 2012	October 1, 2012
October 15, 2012	November 1, 2012
November 15, 2012	December 1, 2012

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 910-2011, 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/pages/rules/index.html>>

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.

Note: The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division. Any discrepancies with the published version are satisfied in favor of the Administrative Order.

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EXECUTIVE ORDERS

EXECUTIVE ORDER 12 - 10

ESTABLISHING THE OREGON DOMESTIC VIOLENCE PREVENTION AND RESPONSE TASK FORCE

Oregon, like most states across the nation, continues to see an increase in injuries and death due to domestic violence. Despite the many efforts aimed at preventing this violence and supporting its victims, domestic violence continues to be a public health and safety crisis in our communities.

The effects of this violence on our families and communities are profound. Impacts include personal injury, homelessness, lost work time and productivity, alcohol and other drug abuse, increased health care costs, adverse impacts on children, and denial of victims' basic human dignity. Too often, as we have seen repeatedly in Oregon, domestic violence can be lethal.

Across Oregon, families, government agencies, schools, victim services advocates, communities, employers, public health and social service organizations are struggling to respond to this crisis.

Domestic violence is one of the most complex and tragic challenges our society faces today. We must commit to identifying gaps that currently exist in our response to this public health and safety crisis. We must further create a plan to ensure that culturally appropriate best practice prevention and response methods are implemented, so that victims and children are protected and communities are safer.

This Order creates the Oregon Domestic Violence Prevention and Response Task Force to engage stakeholders, to identify priorities, and to create and facilitate the implementation of a long term strategic plan to eradicate domestic violence in our state.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Oregon Domestic Violence Prevention Task Force ("Task Force") is established.
2. The purpose of the Task Force shall be to:
 - a. Facilitate the coordination of the statewide response to domestic violence including prevention activities;
 - b. Identify and address existing gaps in services and system response, including disparate services for racial and ethnic minorities, Native American and tribal members, and gay and transgender populations;
 - c. Improve the efficacy and efficiency of system response to domestic violence;
 - d. Identify and implement best practices prevention strategies;
 - e. Provide leadership and serve as a forum to engage key stakeholders in establishing goals, creating performance measures, supporting implementation, and monitoring outcomes;
 - f. Provide regular updates on the status of goals and outcomes to the Governor's Office and the Legislature;
 - g. Advise the Governor and the legislature on policy, Legislative, and other changes necessary to implement prevention and response strategies; and
 - h. Advocate for legislative, policy, and other changes necessary to accomplish the Task Force's charge.

3. The Task Force shall consist of 19 members. All members shall serve at the pleasure of their appointing authority. The Task Force shall include:

- a. One member who is a non-profit victim services advocate from an urban community, appointed by the Governor;
 - b. One member who is a non-profit victim services advocate from a rural community, appointed by the Governor;
 - c. One member who is a non-profit children's advocate, appointed by the Governor;
 - d. Three members representing racial minorities, appointed by the Governor;
 - e. Two members representing Oregon's federally recognized tribes, appointed by the Governor;
 - f. One member representing gay and transgender advocates, appointed by the Governor;
 - g. One member who represents the civil legal services community, appointed by the Governor;
 - h. One member representing District Attorneys in Oregon, appointed by the Governor;
 - i. One member of the public who is a survivor of domestic violence, appointed by the Governor;
 - j. The Attorney General or designee;
 - k. The director of the Bureau of Labor and Industries or designee;
 - l. The director of the Oregon Health Authority or designee
 - m. The director of Oregon Housing and Community Services;
 - n. The director of the Department of Human Services;
 - o. One member of the state senate, appointed by the Senate President; and
 - p. One member of the state house, appointed by the House Speaker.
4. During the first year of operation, the Task Force shall address the following topics with the intent of making recommendations to the Governor and the Legislature:
- a. Adequacy and availability of services to racial and ethnic minorities;
 - b. Domestic violence in the workplace;
 - c. Teen dating violence; and
 - d. Availability and adequacy of services to minors (issues raised in SB 757, 2011 legislative session);
5. Task Force shall also prioritize the findings and recommendations of the Oregon Domestic Violence Fatality Review Team in preparing recommendations for the Legislature. The Task Force shall coordinate recommendations with the work of the Attorney General's Sexual Assault Task Force and the Batterers Intervention Task Force.
6. Staff for the Task Force shall be provided by the Department of Human Services and the Oregon Health Authority.
7. The Governor will appoint a Chair and Vice-Chair of the Task Force from the members of the Task Force. The Chair shall estab-

EXECUTIVE ORDERS

lish an agenda and provide leadership and direction. The Task Force shall meet at least 9 times per year at the direction of the Chair or the Governor.

8. The Chair may appoint and approve the creation of subcommittees as necessary to address the subject matter called for in this order. The Chair may, on behalf of the Governor, request participation of other persons in subcommittees to further the Task Force's work.

9. The Chair shall appoint members as necessary to serve as liaisons to other groups with related missions.

10. 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 members.

11. The members of the Task Force shall receive no compensation for their activities as members of the Task Force.

12. This Order shall expire December 31, 2014.

Done at Salem, Oregon, this 22nd day of June, 2012.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 12 - 11

DETERMINATION OF A STATE OF EMERGENCY IN HARNEY AND MALHEUR COUNTIES DUE TO EXTREME FIRES

Pursuant to ORS 401.165, I find that extreme fires have caused and immediately threaten to cause local adverse natural and economic disaster conditions in Harney and Malheur Counties. These conditions have resulted in evacuations of homes, road closures, power outages, as well as broad impacts to cattle, ranching operations, wildlife and habitat.

Beginning on July 8th, 2012 lightning strikes ignited two large fires: the Miller Homestead Fire in Harney County and the Long Draw Fire in Malheur County. With existing drought conditions, high temperatures, and erratic winds, these two fires grew quickly. Combined, the fires have burned over 750,000 acres in the two counties, making them among the largest fires in state history. Professional and volunteer firefighters and everyday citizens are to be commended for their fire defense efforts and success in limiting damages and protecting both life and property under extremely challenging conditions.

The conditions resulting from these wildfires threaten significant economic loss to Harney and Malheur Counties, as well as to the counties' agricultural, livestock, and natural resource land bases. Current conditions are being addressed by state agencies including the Department of Agriculture, Department of Fish and Wildlife, and Oregon Emergency Management.

A timely response to this situation is vital to the well being and economic security of the citizens and businesses in the region. I am

therefore declaring a state of emergency in Harney and Malheur Counties and directing the following activities:

IT IS HEREBY ORDERED AND DIRECTED:

1. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources available to mitigate adverse conditions and affect agricultural recovery in Harney and Malheur Counties.

2. The Oregon Department of Fish and Wildlife is directed to coordinate and provide assistance in seeking federal resources available for rangeland species and habitat restoration and monitoring in Harney and Malheur Counties.

3. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions in Harney and Malheur Counties.

4. All other departments are directed to coordinate with the above agencies and to provide appropriate state resources as determined essential to assist affected political subdivisions in Harney and Malheur Counties.

This emergency is declared only for **Harney and Malheur Counties** and expires on December 31, 2012.

These findings were made verbally on July 16th, 2012 at 3:30 p.m.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER 12 - 12

AMENDING EXECUTIVE ORDER 12-10 ESTABLISHING THE OREGON DOMESTIC VIOLENCE PREVENTION AND RESPONSE TASK FORCE

On June 22, 2012, I issued Executive Order No. 12-10 establishing the Oregon Domestic Violence Prevention and Response Task Force.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

- Section 3 of Executive Order No. 12-10 is amended as follows:
 - The Task Force shall consist of 21 members. All members shall serve at the pleasure of their appointing authority. The Task Force shall include:
 - One member who is a non-profit victim services advocate from an urban community, appointed by the Governor;
 - One member who is a non-profit victim services advocate from a rural community, appointed by the Governor;
 - One member who is a non-profit children's advocate, appointed by the Governor;
 - Three members representing racial minorities, appointed by the Governor;
 - Two members representing Oregon's federally recognized tribes, appointed by the Governor;

EXECUTIVE ORDERS

f. One member representing gay and transgender advocates, appointed by the Governor;

g. One member who represents the civil legal services community, appointed by the Governor;

h. One member representing District Attorneys in Oregon, appointed by the Governor;

i. One member of the public who is a survivor of domestic violence, appointed by the Governor;

j. The Attorney General or designee;

k. The director of the Bureau of Labor and Industries or designee;

l. The director of the Oregon Health Authority or designee

m. The director of Oregon Housing and Community Services;

n. The director of the Department of Human Services;

o. Two members of the state senate, appointed by the Senate President; and

p. Two members of the state house, appointed by the House Speaker.

Done at Salem, Oregon, this 23rd day of July, 2012.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

REQUEST FOR COMMENTS PROPOSED CLEANUP ACTION FOR (FORMER) LINDBECK FARMS

COMMENTS DUE: 5 p.m., August 31, 2012

PROJECT LOCATION: Tax Lot 103, Orchard Heights Road, Salem, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.320 DEQ is providing a thirty-day opportunity for public review and comment on the (former) Lindbeck Farm administrative records that support a No Further Action (NFA) finding. The Lindbeck Farm facility has historically been used for agricultural purposes and the site is currently being redeveloped as an urban residential use.

HIGHLIGHTS: Mountain West Investment Company (MWIC) requested a No Further Action (NFA) from DEQ with respect to site investigation and cleanup of legacy pesticides related to historic agricultural activities at the site. MWIC entered DEQ's Voluntary Cleanup Program (VCP) on June 29, 2012 for regulatory oversight under the Independent Cleanup Pathway (ICP).

HOW TO COMMENT: Send comments by 5 p.m., August 31, 2012, to DEQ Project Manager Cliff Walkey at walkey.cliff@deq.state.or.us

A thirty-day public opportunity to review and comment will extend from August 1, 2012 through August 31, 2012.

To review the project file, call Cliff Walkey at (541) 633-2003 for a file review appointment.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, then enter ECSI #5732 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI # 5732 in the Site ID/Info column.

THE NEXT STEP: DEQ intends to issue a No Further Action (NFA) finding conditioned upon comments received during the public opportunity to review the (former) Lindbeck Farm administrative record during August 2012. DEQ will consider and respond to all comments received.

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 and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us

People with hearing impairments may call 711.

PUBLIC NOTICE

CONSENT ORDER SIGNED WITH PORT OF PORTLAND FOR MCBRIDE SLOUGH IN PORTLAND

PROJECT LOCATION: 8000 block, NE Alderwood Rd., Portland, Oregon.

AGREEMENT: The Department of Environmental Quality has entered into a consent order agreement with the Port of Portland. Under the agreement, the Port will characterize sediments in McBride Slough, determine sediment risk to human and ecological health and identify any current upland sources of contaminants to the McBride Slough. The Port also agrees to produce a feasibility study to determine options for any future action needed to clean up McBride Slough sediments and control current upland sources of contaminants.

HIGHLIGHTS: McBride Slough originates near the SE corner of Portland International Airport and flows under Alderwood Road. McBride Slough water is pumped to the mainstem Columbia Slough east of Alderwood Road. Multnomah County Drainage District collected and analyzed sediments in McBride Slough as a part of emergency sediment dredging and stockpiling work to reduce flooding risks in winter 2011. The investigation identified contamination as potentially posing unacceptable risk to human health and the environment in both dredge material and the new McBride Slough sediment surface. Elevated contaminants included polychlorinated biphenyls, also known as PCBs, pesticides and polynuclear aromat-

ic hydrocarbons. During historic airport operations, hazardous substance releases likely occurred to McBride Slough as a result of contaminated storm water runoff. The facility currently operates under a stormwater discharge permit.

FOR MORE INFORMATION: To access the consent order along with site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to: <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.aspx?SourceIdType=11&SourceId=5676&Screen=Load> Complete site files for ECSI#5676 are available for public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files, call 503- 229-6729. For more information about this cleanup project, contact DEQ Project Manager Sarah Miller at 503-229-5040 or miller.sarah@deq.state.or.us

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 and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

REQUEST FOR COMMENTS

PROPOSED CLEANUP ACTION FOR SEVENTH STREET STATION, 701 SW 7TH STREET, CORVALLIS, OREGON

COMMENTS DUE: 5 p.m., August 31, 2012

PROJECT LOCATION: 701 SW 7th Street, Corvallis, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.320 DEQ is providing a thirty-day opportunity for public review and comment on the 701 SW 7th Street, Corvallis, Oregon facility administrative records that support a No Further Action (NFA) finding. The site is currently being redeveloped with multifamily residential units. Prior to construction activities, the site was primarily vacant land with the exception of a single story warehouse in the central portion of the site, a billboard located on the northeastern portion of the site, and a railroad spur transecting the northeastern portion of the site.

HIGHLIGHTS: 701 SW 7th Street, LLC requested a No Further Action (NFA) from DEQ with respect to site investigation and cleanup of legacy contamination related to historic activities at the site. 701 SW 7th Street, Corvallis, Oregon entered DEQ's Voluntary Cleanup Program (VCP) on June 27, 2012 for regulatory oversight under the Independent Cleanup Pathway (ICP).

HOW TO COMMENT: Send comments by 5 p.m., August 31, 2012, to DEQ Project Manager Cliff Walkey at walkey.cliff@deq.state.or.us and/or by US Postal mail addressed to Mr. Walkey's attention at the DEQ's Bend, Oregon office located at 475 NE Bellevue Drive, Suite 110, Bend, Oregon 97701-7415.

A thirty-day public opportunity to review and comment will extend from August 1, 2012 through August 31, 2012.

To review the project file, call Cliff Walkey at (541) 633-2003 for a file review appointment.

To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, then enter ECSI #5723 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI # 5723 in the Site ID/Info column.

THE NEXT STEP: DEQ intends to issue a No Further Action (NFA) finding conditioned upon comments received during the public opportunity to review the 701 SW 7th Street, Corvallis, Oregon administrative record during August 2012. DEQ will consider and respond to all comments received.

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 and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

OTHER NOTICES

A CHANCE TO COMMENT ON A PROPOSED REMEDY SELECTION FOR THE SKOPIL'S DRY CLEANER PROPERTY, LOCATED AT 2605 WILLAMETTE STREET, EUGENE, OREGON

Oregon Department of Environmental Quality (DEQ) invites public comment on a proposed remedy selection for a cleanup of soil and groundwater contamination at the Skopil's Dry Cleaner property, located at 2605 Willamette Street, Eugene, Oregon. DEQ has completed a review of remedial action alternatives at the Skopil's Dry Cleaner Site (Site). The Site is located in a mixed commercial/residential area.

Contamination in soil and groundwater at the site appear to result from releases of dry cleaning chemical (perchloroethane, or PCE) to the surface or subsurface. It is likely that much of the contamination at the site resulted from historic past practices at the facility. Skopil's Dry Cleaner now reports using a non-PCE based cleaner.

Skopil's has already performed an interim remedial action measure at the Site involving removal of contaminated soil, as well as in-situ chemical oxidation, followed by several years of groundwater quality and air quality monitoring.

Six applicable technologies were considered as remedial actions. The alternatives were: 1) Soil excavation and disposal, 2) soil excavation and disposal together with an engineering control 3) soil excavation and disposal together with in-situ biological/chemical reduction and engineering control 4) limited soil excavation/disposal together with in-situ biological/chemical reduction and soil vapor extraction, 5) soil excavation/disposal together with in-situ biological/chemical reduction, in-situ chemical oxidation, and soil vapor extraction, and 6) soil excavation/disposal together with in-situ biological/chemical reduction (backfill and injection), and soil vapor extraction.

These alternatives were evaluated with regard to the applicability of the technology to the subsurface conditions, the contaminant's characteristics, and the demonstrated effectiveness at similar sites.

DEQ is recommending remedial alternative 4), which is a combination of soil excavation and disposal together with in-situ biological and chemical reduction plus soil vapor extraction that will remove remaining residual contamination and prevent exposure to contamination. The institutional controls would consist of a DEQ-approved Easement and Equitable Servitude (EES) recorded on the property deed. The EES would require the following:

1. If necessary based on the presence of residual contamination in soil or groundwater, a deed restriction identifying restrictions on the use of the property.

2. Preparation of a Contaminated Media Management Plan for proper management of any impacted media generated during construction activities.

The EES would run with the land to ensure that future owners or lessees of the property have knowledge of site conditions and the requirements of the EES. With DEQ concurrence, the EES could be removed from the property deed if additional site investigation or testing were performed that demonstrated additional controls were no longer needed.

Project documents for this site are available for public review at DEQ's Eugene office, 165 E. 7th Avenue, Suite 100, 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. DEQ must receive written comments by 5 p.m., August 31, 2012.

REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL FOR USPS-PROCESSING AND DISTRIBUTION CENTER

COMMENTS DUE: August 30, 2012

PROJECT LOCATION: 715 NW Hoyt Street, Portland, Oregon

PROPOSAL: The Department of Environmental Quality invites public comment on a proposed conditional no further action decision

for the United States Postal Service – Processing and Distribution (USPS-P&DC) facility.

HIGHLIGHTS: The 13-acre site is currently occupied by the central mail processing and distribution center for Oregon and SW Washington, and includes a large processing facility and post office, parking garage, vehicle maintenance facility, and parking and maneuvering areas for postal trucks. From 1882 to 1974, portions of the site were occupied by a rail yard, while from 1893 to the early 1930s a small gas manufacturing plant operated on-site. USPS occupied the eastern half of the site under a lease beginning in the 1960s and purchased the entire site in 1974.

Soil contamination has been found on-site, primarily metals and petroleum compounds. Groundwater in the northwest site corner has been impacted by former gas manufacturing operations. Risk assessments and evaluations conducted from 2006 to 2009 identified potential risk to excavation workers and occupational workers (by volatilization from soil in one area), and hypothetical future urban residents and occupational, excavation and construction workers. Risk to current site users (USPS employees) is mitigated by the paving and buildings covering the site. Site redevelopment, if it occurs, would expose covered soil and possibly impacted groundwater in the northwest site corner, and present risk at that time. In 2010, DEQ selected a cleanup remedy for the site based on both current (USPS) use, and considering potential site redevelopment. The remedy for current use (Existing Site Use) consists of: 1) maintenance of the existing site cover; 2) appropriate management of any soil or groundwater removed from below the site cover; 3) a prohibition on groundwater use; and 4) the recording of a property deed that recognizes site environmental conditions and related restrictions. If the site is redeveloped, the Future Site Use remedy will need to be implemented which includes limited hot spot removal and replacement of the protective cover over the site.

In 2011, improvements to the site cover were made with DEQ oversight, including repaving in some areas where paving was damaged. A Closure Report for the "Existing Site Use" remedy was approved by DEQ in 2012. The required deed notice has been recorded. All conditions of the DEQ-selected remedy under the Existing Site Use scenario have been met. DEQ is therefore prepared to issue a conditional No Further Action determination for the USPS site following this public notice period.

HOW TO COMMENT: Site files are available for public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files please call (503) 229-6729. The DEQ Project Manager is Daniel Hafley, (503) 229-5417. Send written comments to the Project Manager, DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or hafley.dan@deq.state.or.us by August 30, 2012.

THE NEXT STEP: DEQ will consider all public comments and the Northwest Region Administrator will make and publish the final decision after consideration of these comments.

OPPORTUNITY FOR COMMENTS PROPOSED APPROVAL OF ANALYSIS OF BROWNFIELD CLEANUP ALTERNATIVES

COMMENTS DUE: 5 p.m., August 31, 2012

PROJECT LOCATION: 116 NW Bridge Rd., John Day

PROPOSAL: The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on the Analysis of Brownfield Cleanup Alternatives (ABCA) for the Blue Mtn. Junior High Building located at 116 NW Bridge Rd. in John Day, Oregon. The ABCA details the analysis and selection of protective cleanup options designed to address Asbestos Containing Material (ACM) at the site.

HIGHLIGHTS: The property is comprised of an approximately 2-acre parcel including a main school building (constructed in 1936), gym, and two independent building structures (a classroom and a museum). ACM has been identified as the primary contaminant in the buildings that must be addressed before any renovation of the site. The ABCA selected the abatement of all ACM and miscellaneous hazardous substances as the preferred remedial alternative.

OTHER NOTICES

HOW TO COMMENT: Send comments by 5 p.m., August 31, 2012, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 700 SE Emigrant, Suite 330, Pendleton, OR 97801, by e-mail at robertson.katie@deq.state.or.us or by fax at 541-278-0168.

To access site summary information, ABCA, and other documents in DEQ's Environmental Cleanup Site Information database, go to www.deq.state.or.us/lq/ECSI/ecsi.htm, select "Search complete ECSI database" link, enter 5283 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5283 in the Site ID/Info column. To review the project file, contact the project manager above for a file review appointment.

THE NEXT STEP: DEQ will consider all public comments received before finalizing the selected remedial action for the site. DEQ will provide written responses to all received public comments.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS

PROPOSED NO FURTHER ACTION DETERMINATION, BANDON SHOPPING CENTER, BANDON, OREGON

COMMENTS DUE: August 30, 2012

PROJECT LOCATION: The Bandon Shopping Center is located at 11 Michigan Avenue, in Bandon, Oregon.

PROPOSAL: DEQ is proposing that no further action is required at the site to human health and the environment.

HIGHLIGHTS: Historical operation of a drycleaner in the Bandon shopping center resulted in drycleaning chemicals being released to the environment. Investigations beginning in 2008 indicated that drycleaning vapors were present in indoor air and beneath the slab floor of the building at levels that posed a risk to site users. A treatment system was installed to remove the vapor and operated for several months in 2011. Subsequent tests showed that drycleaning vapor levels had reduced significantly. Drycleaning vapors at the site no longer pose an unacceptable risk to site users.

There is no significant soil contamination at the site and no groundwater contamination. There is no off-site contamination or ecological exposure to site-related chemicals.

Since conditions on site and off site are protective of human health and since there is no ecological risk, DEQ has determined that no further action is required. On August 1, running through August 30, 2012, DEQ will provide public notice and opportunity to comment on the determination.

HOW TO COMMENT: The proposed determination is available at DEQ's Western Region Office, at 165 E 7th, Suite 100, Eugene, Oregon 97401, or electronically by request to brown.geoff@deq.state.or.us. To review files at DEQ's office, please contact DEQ's file review coordinator at (541) 686-7819 to make an appointment. Comments may be submitted to Geoff Brown, DEQ Cleanup Project Manager, by email at brown.geoff@deq.state.or.us; by mail at DEQ, 167 E 7th, Suite 100, Eugene, Oregon 97401; or by fax at 541-686-7551.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. Once all comments have been considered and addressed, DEQ will issue a *letter of no further action* to the property owner and change the status of the site in the ECSI database.

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 Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Amend rules related to registration and application for registration. Amend rule related to Hearing Requirements.

Date:	Time:	Location:
9-11-12	1:30 p.m.	670 Hawthorne Ave. SE Suite 220 Salem, OR, 97301

Hearing Officer: Dan Linscheid

Stat. Auth.: ORS 672.255

Other Auth.: ORS 670.310

Stats. Implemented: ORS 672.002-672.325

Proposed Amendments: 820-001-0015, 820-010-0215, 820-010-0225, 820-010-0226, 820-010-0415, 820-010-0440, 820-010-0444, 820-010-0463, 820-010-0470, 820-020-0040

Last Date for Comment: 9-11-12, Close of Hearing

Summary: OAR 820-001-0015 – Revises requirements related to a hearing request as a result of recent changes made to the Model Rules as they relate to the Administrative Procedures Act (APA).

OAR 820-010-0215 – Revises language to include that any evidence of further preparation for readmission to a subsequent examination as required by OAR 820-010-0465 must be included in the single application package.

OAR 820-010-0225 – Revises language to clarify that examination scores will only be released if the official transcripts(s) that documents the degree and date awarded is received with 6 months of taking the examination.

OAR 820-010-0226 – Revises language to clarify that examination scores will only be released if the official transcripts(s) that documents the degree and date awarded is received with 6 months of taking the examination. Also includes language to accept education obtained from programs related to engineering or land surveying for entrance to the FLS examination; sets the criteria.

OAR 820-010-0415 – Housekeeping; Removes language that refers to the Washington State Board of Registration for Professional

Engineers and Land Surveyors and the obsolete Memorandum of Understanding (MOU).

OAR 820-010-0440 – Changes the available administration for the Industrial discipline from Fall to Spring; minor housekeeping.

OAR 820-010-0444 – Housekeeping; Deletes the Washington Structural III examination from the examinations proctored by the Board.

OAR 820-010-0463 – Housekeeping; Deletes reference to the cutoff score and MOU related to the Washington Structural III examination.

OAR 820-010-0470 – Housekeeping; Deletes the Washington Structural III examination.

OAR 820-020-0040 – Includes additional reasons that may invalidate the examination results of an examinee who engages in examination subversion.

Rules Coordinator: Mari Lopez

Address: Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301

Telephone: (503) 362-2666, ext. 26

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amends the rules to include the notice of rights forms.

Stat. Auth.: ORS 144.140, 144.050, 144.123, 183.315, 183.415, 163.105, 163.115

Other Auth.: Smith v. Board of Parole, 250 Or App 345 (2012)

Stats. Implemented: ORS 144.106, 144.107, 144.108, 144.120, 144.122, 144.123, 144.125, 144.130, 144.185, 144.228, 144.247, 144.232, 144.315, 144.317, 144.331, 144.341, 144.343

Proposed Amendments: 255-030-0013, 255-032-0022, 255-075-0025

Last Date for Comment: 8-21-12, 5 p.m.

Summary: This rulemaking formally adopts the notice-of-rights forms for general Board hearings, murder review (aggravated murder) hearings, and sanction hearings (Morrissey hearings).

Rules Coordinator: Shawna Harnden

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

Telephone: (503) 945-0913

Commission for the Blind Chapter 585

Rule Caption: Business Enterprise Program (BEP) Rules and Regulations.

Date:	Time:	Location:
9-12-12	2 p.m.	535 SE 12th Ave. Portland, OR

Hearing Officer: Linda Mock

Stat. Auth.: ORS 346.150 & 346.540

Other Auth.: Randolph-Sheppard Act, 20 U.S.C. § 107b (5); 34 C.F.R. § 395.4

Stats. Implemented: ORS 346.180, 346.220 & 346.510 to 346.570
Proposed Amendments: 585-010-0015

Last Date for Comment: 8-31-12, 5 p.m.

Summary: Business Enterprise Program Rules and Regulations, incorporated by reference into OAR 585-010-0015.

The proposed rule amendment relates to OAR 585-010-0015, which adopts and incorporates by reference the Business Enterprise Rules and Regulations (BEP Rules) governing the Commission's vending program. The Commission proposes to amend the BEP Rules in their entirety. The changes to the BEP Rules address amendments to provisions concerning licensing of blind persons to operate vending facilities on federal, state and other public buildings or property; vacancy of vending facilities; selection of licensees to operate vending facilities; subcontracting the operation of vending facilities; establishment and use of set-aside payments by licensees; Commission and licensee responsibilities in operating vending facilities,

NOTICES OF PROPOSED RULEMAKING

including vending facility equipment repair costs by licensees; licensee record-keeping requirements; audits of vending facility and licensee records; standards of licensee and facility appearance; election and operation of the Business Enterprise Consumer Committee; licensee complaint and Commission licensing enforcement procedures; hearing and arbitration procedures.

Rules Coordinator: Linda Mock

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

Telephone: (971) 673-1588

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

Rule Caption: Proposed changes with federal OSHA amendments for hazard communication in general industry, construction, shipyard employment.

Date:	Time:	Location:
9-5-12	10 a.m.	Labor and Industries Bldg. 350 Winter St. NE, Conference Rm. F (Basement) Salem, OR 97301

Hearing Officer: Sue Joye

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

Stats. Implemented: ORS 654.001-654.295

Proposed Amendments: 437-002-0005, 437-002-0100, 437-002-0107, 437-002-0118, 437-002-0122, 437-002-0280, 437-002-0288, 437-002-0360, 437-002-0364, 437-002-0377, 437-002-0378, 437-002-0391, 437-003-0001, 437-005-0001

Proposed Repeals: 437-002-0289, 437-002-0361, 437-003-0035

Last Date for Comment: 9-12-12, Close of Business

Summary: Federal OSHA modified its Hazard Communication Standard (HCS) to conform to the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). OSHA has determined that the modifications will significantly reduce costs and burdens while also improving the quality and consistency of information provided to employers and employees regarding chemical hazards and associated protective measures. OSHA has concluded this improved information will enhance the effectiveness of the HCS in ensuring that employees are apprised of the chemical hazards to which they may be exposed, and in reducing the incidence of chemical-related occupational illnesses and injuries.

The modifications to the standard include revised criteria for classification of chemical hazards; revised labeling provisions that include requirements for use of standardized signal words, pictograms, hazard statements, and precautionary statements; a specified format for safety data sheets; and related revisions to definitions of terms used in the standard, and requirements for employee training on labels and safety data sheets. OSHA and Oregon OSHA are also modifying provisions of other standards, including standards for flammable and combustible liquids, spray finishing, reinforced plastics, dipping and coating, welding, cutting, and brazing, hazardous waste operations and emergency response, process safety management, pipe labeling, and most substance specific health standards, to ensure consistency with the modified HCS requirements. The consequences of these modifications will be to improve safety, to facilitate global harmonization of standards, and to produce hundreds of millions of dollars in annual savings nationally.

This rulemaking will also repeal OAR 437-002-0361, which is an Oregon-initiated rule regarding certain compliance dates for the Ethylene Oxide rule, OAR 437-002-1910.1047. These compliance dates expired in 1989 and the rule is no longer necessary. Also repealed is OAR 437-002-0289 Precautionary Labels, in general requirements in Division 2/Q. This Oregon-initiated rule is unnecessary because precautionary labels are covered in the federal amendments in this rulemaking.

Rules Coordinator: Sue C. Joye

Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE, Salem, OR 97301-3882

Telephone: (503) 947-7449

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

Rule Caption: Workers' compensation rules governing medical fee schedules.

Date:	Time:	Location:
8-21-12	10 a.m.	Labor & industries Bldg. 350 Winter St. NE Rm. F (Basement) Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.248 & 656.726(4)

Stats. Implemented: ORS 656.248

Proposed Amendments: 436-009-0015, 436-009-0050, 436-009-0080, 436-009-0207, 436-009-0240, 436-009-0260

Last Date for Comment: 8-27-12, Close of Business

Summary: The agency proposes to amend these rules to improve organization, clarity, and consistency, to eliminate obsolete or redundant wording, and to assist readers with access to references and resources.

More specifically:

The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules," to:

- Specify maximum monthly rental rates for certain codes used to bill for durable medical equipment, prosthetics, and orthotics, and explain how to determine daily rates.

- Clarify that hearing aids must be prescribed by the attending physician, authorized nurse practitioner, or specialist physician.

- Require that hearing and vision services billed using certain HCPCS codes must be reimbursed at the provider's usual fee, unless otherwise provided by contract.

- Adjust maximum reimbursement amounts for durable medical equipment, prosthetics, orthotics, and supplies to make the maximums proportionate to the reimbursement levels by service category before 1/1/2012.

- Use an updated Centers for Medicare and Medicaid Services (CMS) spreadsheet (DME 12_A, effective Jan. 1, 2012) as the basis for the DMEPOS fee schedule. Note: The agency adopts most of CMS' DMEPOS fee schedule model but not CMS' payment rates — see Appendix E to find maximum payment amounts for specific services, and refer to the "Statement of Need and Fiscal Impacts."

- Allow payment to ASCs for certain individual surgical procedures that are usually packaged.

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

Rule Caption: Workers' compensation rules governing insurance coverage, recordkeeping, and worker leasing.

Date:	Time:	Location:
8-21-12	10 a.m.	Labor & Industries Bldg. 350 Winter St. NE Rm. F (Basement) Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.407, 656.430, 656.455, 656.704, 656.726(4), 656.850, 656.855, 731.475

Stats. Implemented: ORS 656.407, 656.430, 656.455, 656.704, 656.850, 656.855, 731.475

Proposed Amendments: Rules in 436-050

Last Date for Comment: 8-27-12, Close of Business

NOTICES OF PROPOSED RULEMAKING

Summary: The agency proposes to amend these rules to improve organization, clarity, and consistency, to eliminate obsolete or redundant wording, and to assist readers with access to references and resources.

More specifically:

The agency proposes to amend OAR chapter 436, division 050, "Employer/Insurer Coverage Responsibility," to:

- Amend the definition of "process claims" to allow receipt of claim reports at locations out of state as long as claims are forwarded to an Oregon location for processing.

- Specify that proof of service of a civil penalty order may include a hard copy signed receipt or electronic verification.

- Include the statutory limitations that an insurer may not have more than eight locations at any one time and self-insured employers may not have more than three locations where claims are processed or records are maintained.

- Specify the types of contact information an insurer or self-insured employer must send to the director regarding its processing locations, service companies, and service agreements, and before changing its processing location, service company, or self-administration.

- Clarify insurers', self-insured employers', and worker leasing companies' record-keeping and record retention requirements.

- Eliminate the requirement that a self-insured employer may only obtain an irrevocable standby letter of credit from a federally chartered bank that has an Oregon branch office.

- Require that self-insured employers include in their annual reporting, the total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.

- Clarify that the director may require a self-insured employer to submit claim loss data more frequently if the nature of the self-insured employer's business has changed since the last annual loss report.

- Provide that when determining the amount of a self-insured employer's security deposit, the director may consider changes in the employer's business, and may include IBNR ("incurred but not reported") if the director has knowledge of factors indicating financial stress or material growth in the self-insured exposure.

- Require that a self-insured employer group provide evidence to the director that the employer requesting termination has been provided a written reminder about its potential future liability.

- Increase the amount a self-insured employer group (other than a governmental subdivision) must maintain in a common claims fund, but provide that the common claims fund amounts can instead be included in the determination of the self-insured employer group's security deposit.

- Clarify that a worker leasing company may not provide workers' compensation coverage for another leasing company doing business in Oregon, regardless of whether any of the companies involved is licensed for leasing in Oregon.

- Prohibit a client employer from obtaining workers on a non-temporary basis from an unlicensed worker leasing company.

- Require temporary service providers or their clients to report information upon the director's request regarding the nature of the work performed.

- Clarify what it means to provide a worker on a temporary basis, to better distinguish temporary from leased workers.

- Amend the types of information a worker leasing company applicant must provide to the director.

- Provide that the director may conduct a background investigation of an owner of a prospective leasing company.

- Require that a worker leasing company submit a renewal application to the director at least 90 days before the expiration of the current license, and any supplemental material within 45 days before the expiration.

- List reasons the director may refuse to issue or renew a license or disqualify a person, controlling person, or worker leasing company

from applying for a license in the future; provide that a person may appeal the director's decision.

- Eliminate matrices for penalties against worker leasing companies and refer to the director's general authority to impose penalties under ORS 656.745.

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

Rule Caption: Workers' compensation rules governing Employer-at-Injury Program, Preferred Worker Program, and vocational assistance.

Date:

8-21-12

Time:

10 a.m.

Location:

Labor & Industries Bldg.

350 Winter St. NE

Rm. F (Basement)

Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)

Stats. Implemented: ORS 656.340 & 656.622

Proposed Amendments: Rules in 436-105, 436-110, 436-120

Last Date for Comment: 8-27-12, Close of Business

Summary: The agency proposes to amend these rules to improve organization, clarity, and consistency, to eliminate obsolete or redundant wording, and to assist readers with access to references and resources.

More specifically:

The agency proposes to amend OAR chapter 436, division 105, "Employer-at-Injury Program" to:

- Specify that a new employer-at-injury program may not be used for a non-disabling claim that does not become disabling within two years from the date of injury.

- Combine the (current) \$2,500 maximum reimbursement amounts for worksite modification and purchases of tools and equipment to provide a maximum combined reimbursement of \$5,000.

- Provide that all modifications and purchases made by the employer in good faith are reimbursable.

The agency proposes to amend OAR chapter 436, division 110, "Preferred Worker Program," to:

- Clarify that if an employer changes its name or ownership status during a premium exemption period, the employer is not eligible for an additional three years of premium exemption.

- Clarify that if an employer changes the job duties of a preferred worker during the premium exemption period, the employer is not eligible for an additional three years of premium exemption.

- Provide that if the employer accommodates the worker's injury-caused restrictions while waiting for a worksite modification to be completed, the employer may elect to start wage subsidy immediately.

The agency proposes to amend OAR chapter 436, division 120, "Vocational Assistance to Injured Workers," to:

- Define "training."

- Require use of the cost-of-living matrix to calculate a worker's adjusted weekly wage if the worker's regular employment was the employment the worker held at the time of aggravation.

- Limit the types of worker notices that must also be sent to the Workers' Compensation Division.

- List statutory criteria for when the insurer is required to complete an eligibility evaluation.

- Clarify that the insurer must determine eligibility in cases where the worker's claim was initially denied and is later accepted.

- Clarify that the eligibility condition requiring that the worker be available in Oregon includes a worker who is within commuting distance of Oregon.

- Include in the vocational eligibility criteria that the worker did not relinquish his or her rights to vocational assistance in writing.

NOTICES OF PROPOSED RULEMAKING

- Clarify that a condition for ending eligibility, in addition to suitable employment for 60 days, is completion of any necessary work-site modifications.

- Amend the list of labor market references that may be used to analyze the worker's labor market.

- Clarify that the insurer must not use any knowledge, skills, or abilities gained by the worker after the date of injury or aggravation to determine the worker's eligibility for vocational assistance.

- Prescribe the conditions, time frames, and documentation applicable to a worker's self-sponsored training.

- Provide that basic training, on-the-job training, and occupational skills training may be extended by the insurer (beyond the time frames stated in rule).

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

Department of Environmental Quality

Chapter 340

Rule Caption: Rulemaking increases water quality permit fees by 3 percent to address increasing permit program costs.

Date:	Time:	Location:
8-15-12	6 p.m.	475 NE Bellevue, Suite 110 Bend, OR
8-20-12	6 p.m.	221 Stewart Ave., Suite 201 Medford OR
8-21-12	6 p.m.	811 SW Sixth Ave., 10th Floor Portland, OR

Hearing Officer: DEQ employee

Stat. Auth.: ORS 454.625, 468.020 & 468.065

Stats. Implemented: ORS 454.745, 454.755, 468.065, 468B.035, 468B.050, 468B.051 & 468B.195

Proposed Amendments: 340-045-0075, 340-071-0140

Last Date for Comment: 8-24-12, 5 p.m.

Summary: This proposal to amend the Oregon Administrative Rules increases water quality permit fees. DEQ proposes to increase fees for all National Pollution Discharge Elimination System and Water Pollution Control Facility permits by 3 percent to address increased water quality permit program costs. WPCF-Onsite septic system 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.

Rules Coordinator: Maggie Vandehey

Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

Telephone: (503) 229-6878

Rule Caption: 401 Water Quality Certification Fee Increase.

Date:	Time:	Location:
8-15-12	6 p.m.	Roseburg Central Library 1409 NE Diamond Lake Blvd. Ford Community Rm. Roseburg, OR 97470
8-20-12	6 p.m.	Columbia Gorge Community College 400 East Scenic Dr. Bldg. 3, Classroom 3.203 The Dalles, OR 97058
8-23-12	9:45 a.m.	DEQ Headquarters Conference Rm. EQC-A 811 Sixth Ave. Portland, OR 97204

Hearing Officer: DEQ employee

Stat. Auth.: ORS 420 & 468

Stats. Implemented: ORS 468B.035-468B.047

Proposed Amendments: 340-048-0055

Last Date for Comment: 8-29-12, 5 p.m.

Summary: The Oregon Department of Environmental Quality is proposing to increase fees for certifying that activities requiring federal licenses and permits comply with water quality requirements and standards. DEQ certifies compliance as authorized by Section 401 of the federal Clean Water Act. The proposed fees apply to most removal, fill and other activities, except hydroelectric, requiring 401 certification.

This rulemaking would increase 401 certification fees to cover program costs, provide additional staff to expedite review and approval, and enhance technical assistance to applicants.

The proposed changes will apply to those requiring federal permits or licenses for removal, fill or other activities (except hydroelectric projects) that may result in discharges to Oregon's waters. Applicants could include individuals, small and large businesses, local governments, state and federal agencies and other entities.

Rules Coordinator: Maggie Vandehey

Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

Telephone: (503) 229-6878

Rule Caption: Rulemaking will amend existing program rules that regulate awarding financial assistance to public agencies

Date:	Time:	Location:
9-4-12	3 p.m.	DEQ, 811 SW 6th Ave. 10th Floor, Rm. EQC A Portland, OR
9-5-12	3 p.m.	DEQ, 475 NE Bellevue, Suite 110, Conference Rm. Bend, OR
9-6-12	3 p.m.	DEQ, 221 Stewart Ave. Suite 201, Large Conference Rm. Medford, OR

Hearing Officer: DEQ employee

Stat. Auth.: ORS 468.020, 468.423-468.440

Stats. Implemented: ORS 468.423-468.440

Proposed Adoptions: 340-054-0011, 340-054-0026, 340-054-0027, 340-054-0036, 340-054-0056

Proposed Amendments: 340-054-0005, 340-054-0010, 340-054-0015, 340-054-0022, 340-054-0025, 340-054-0060, 340-054-0065, 340-054-0100, 340-054-0102, 340-054-0104, 340-054-0106, 340-054-0108

Proposed Repeals: 340-054-0020, 340-054-0021, 340-054-0023, 340-054-0024, 340-054-0035, 340-054-0055, 340-054-0085, 340-054-0087, 340-054-0090, 340-054-0093, 340-054-0095, 340-054-0097, 340-054-0098

Last Date for Comment: 9-14-12, 5 p.m.

Summary: This rulemaking will amend the Clean Water State Revolving Fund administrative rules. In Oregon, DEQ administers this loan program under the federal Clean Water State Revolving Fund program authorized by title VI of the Clean Water Act.

The proposed amendments will update current Clean Water State Revolving Fund administrative rule language and clarify processes to improve DEQ's ability to provide financial assistance to public agencies for water quality improvement projects. Amendments include providing flexibility to project eligibility rule language for all types of water quality improvement projects, revising the project application scoring system and ranking criteria to ensure projects funded with Clean Water State Revolving Fund money provide the most benefits possible for water quality, eliminating the expedited loan reserve because the reserve was not used, revising the definition of small community from a population of 5,000 or less to a population of 10,000 or less, increasing the small community loan reserve, reducing the annual fee on all current loans from 0.5 percent to 0.25 percent for two years, reducing interest rates for all loans based on community population and median household income, and awarding principal forgiveness priority to small communities with less than median household income.

Rules Coordinator: Maggie Vandehey

NOTICES OF PROPOSED RULEMAKING

Address: Department of Environmental Quality, 811 SW Sixth Ave.,
Portland, OR 97204-1390
Telephone: (503) 229-6878

Rule Caption: Oregon Clean Fuels Program for fuel suppliers and producers of transportation fuels.

Date:	Time:	Location:
8-24-12	8:30 a.m.	811 SW Sixth Ave. Portland, OR 97204
8-24-12	8:30 a.m.	165 East 7th Ave., Suite 100 Eugene, OR 97401 (teleconference location)
8-24-12	8:30 a.m.	221 Stewart Ave., Suite 201 Medford, OR 97501 (teleconference location)
8-24-12	8:30 a.m.	475 NE Bellevue, Suite 110 Bend, OR 97701 (teleconference location)
8-24-12	8:30 a.m.	700 SW Emigrant, #330 Pendleton, OR 97801 (teleconference location)

Hearing Officer: EQC Chair Blosser

Stat. Auth.: 2009 OL Ch. 754, House Bill 2186 (2009) & ORS 468A.050

Stats. Implemented: 2009 OL Ch. 754, House Bill 2186 (2009) & ORS 468A.050

Proposed Adoptions: 340-253-0000, 340-253-0040, 340-253-0060, 340-253-0100, 340-253-0200, 340-253-0250, 340-253-0310, 340-253-0320, 340-253-0330, 340-253-0340, 340-253-0400, 340-253-0450, 340-253-0500, 340-253-0600, 340-253-0630, 340-253-0650, 340-253-1000, 340-253-1010, 340-253-1020, 340-253-1030, 340-253-2000, 340-253-2100, 340-253-2200, 340-253-2300, 340-253-3000, 340-253-3010, 340-253-3020, 340-253-3030, 340-253-3040, 340-253-3050, 340-253-3060, 340-253-3070

Last Date for Comment: 8-31-12, 5 p.m.

Summary: Climate change poses a serious threat to Oregon's economy, environment and public health. Transportation sources account for approximately one third of all greenhouse gas emissions in Oregon that lead to climate change. The 2009 Oregon Legislature passed HB 2186 that authorized the Oregon Environmental Quality Commission to adopt rules that would reduce lifecycle emissions of greenhouse gases from Oregon's transportation fuels by 10 percent over a 10-year period. These proposed rules provide the regulatory framework to implement HB 2186, and are now referred to as the Oregon Clean Fuels Program.

The Oregon Clean Fuels Program would be implemented in two phases – Phase 1 would be a reporting phase beginning in 2013, and Phase 2 would be a later greenhouse gas emissions reduction phase. Phase 1 would require Oregon fuel producers and importers to register, keep records and report the volumes and carbon intensities of the fuels they provide in Oregon. Phase 2 would require regulated parties to reduce the average carbon intensity of gasoline and diesel fuel they provide in Oregon each year to meet the clean fuel standard for that year. Regulated parties could select the strategy that works best for them to meet the requirement, such as providing more bio-fuels, natural gas or electricity, or by purchasing clean fuel credits from suppliers of lower-carbon fuels.

Phase 1 is intended to provide DEQ and regulated parties time to fully develop record-keeping and reporting protocols and systems. It would also allow DEQ to gather data about Oregon's transportation fuels that will help inform DEQ and decision makers about the feasibility of moving ahead with the next phase of the program. If DEQ recommends moving forward to propose Phase 2 of the program, DEQ would initiate a new rulemaking process, including new advisory committees to gather new input on the design of the Phase 2 rules and its fiscal and economic impact. Phase 2 can only be implemented if:

- The Oregon Legislature adopts a bill to remove the statutory 2015 sunset that currently applies to the Oregon Clean Fuels Program; and

- The Oregon Environmental Quality Commission adopts rules to remove a regulatory deferral of Phase 2 of the Oregon Clean Fuels Program.

Rules Coordinator: Maggie Vandehey

Address: Department of Environmental Quality, 811 SW Sixth Ave.,
Portland, OR 97204-1390

Telephone: (503) 229-6878

Rule Caption: Klamath Falls PM2.5 Attainment Plan.

Date:	Time:	Location:
8-21-12	1 p.m.	OIT, Mazama Rm. 3201 Campus Dr. Klamath Falls, OR 97601
8-21-12	7 p.m.	OIT, Mazama Rm. 3201 Campus Dr. Klamath Falls, OR 97601

Hearing Officer: DEQ employee

Stat. Auth.: ORS 468, 468A, 468.020, 468A.025, 468A.460 & 477
Stats. Implemented: ORS 468.020, 468A.010–468A.025, 468A.035, 468A.515, 468A.555, 468A.612 & 468A.085

Proposed Adoptions: 340-240-0500 – 340-240-0630, 340-262-1000, 340-264-0175

Proposed Amendments: 340-200-0040, 340-204-0010, 340-204-0030, 340-225-0090, 340-240-0010, 340-240-0030, 340-264-0040, 340-264-0078, 340-264-0080, 340-264-0100

Last Date for Comment: 8-28-12, 5 p.m.

Summary: The Oregon Department of Environmental Quality is proposing to adopt rules as part of an attainment plan that will bring the Klamath Falls area into compliance with National Ambient Air Quality Standards for fine particulate, or PM2.5, by the federal deadline of December 2014. These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the federal Clean Air Act. The attainment plan specifies how the community will meet the particulate standard by the federal Clean Air Act deadline of December 2014, including who will conduct the work, and when and how it will be done.

The attainment plan, based on recommendations from DEQ's citizen advisory committee, is a comprehensive mixture of emission reduction strategies consisting of local ordinances, DEQ regulations, and non-regulatory elements including incentives and education. The plan contains additional strategies recommended by the local advisory committee that provide a margin of safety. The plan also provides contingency measures to meet the PM2.5 standard should the community fail to reduce particulate emissions by the 2014 deadline. The proposed attainment plan will aid the state and the community in controlling emissions to ensure clean air in Klamath Falls.

Since residential wood burning emissions comprise most of the harmful particulate emissions in Klamath Falls, most of the proposed particulate reductions will come from enhancements to the community's woodstove curtailment program, implemented through local ordinances. Other attainment strategies include continuing the program of replacing polluting uncertified woodstoves, a public awareness and education program and DEQ rules requiring reasonably available controls to reduce particulate from industrial sources.

If the attainment plan fails to achieve the federal standard by December 2014, additional regulations in the contingency plan will further reduce particulate emissions from wood burning and industry. The proposed rules will increase regulatory flexibility by allowing new or expanded industrial facilities in Klamath Falls to meet existing federal requirements to offset their emissions by removing woodstoves from homes, thereby decreasing wood burning emissions. Historically, industry has only offset emissions by purchasing unused emission credits from other industrial facilities. These cred-

NOTICES OF PROPOSED RULEMAKING

its are not widely available, which could limit economic growth in the area.

Rules Coordinator: Maggie Vandehey
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390
Telephone: (503) 229-6878

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Adopt Rule to Establish and Authorize Coquille Tribe Clam Harvest Permits.

Date: 9-7-12 **Time:** 8 a.m. **Location:** Hermiston Conference Center
415 S. Highway 395
Hermiston, OR 97838

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138

Stats. Implemented: ORS 506.129 & 507.030

Proposed Adoptions: Rules in 635-041

Proposed Amendments: Rules in 635-041

Proposed Repeals: Rules in 635-041

Last Date for Comment: 9-7-12, 8 a.m.

Summary: Adopted rule authorizes the Department to issue, upon annual request from the Coquille Indian Tribe of Oregon (Coquille Tribe), a Coquille Tribal Clam Harvest Permit for exclusive use by the Coquille Tribal members. The methods of take, special area regulations, seasons, and any other restrictions remain identical to those pertaining to sport harvest of clams. The individual Coquille Clam Harvest Permit is valid only within the Coos Bay Estuary, and does not authorize trespass upon private lands or entry or use on private or public lands where landowner permission has not been obtained, or where gathering of clams is precluded by any other statute or rule. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Adopt Rule to Establish and Authorize Siletz Tribe Clam Harvest Permits.

Date: 9-7-12 **Time:** 8 a.m. **Location:** Hermiston Conference Center
415 S. Highway 395
Hermiston, OR 97838

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138

Stats. Implemented: ORS 506.129 & 507.030

Proposed Adoptions: Rules in 635-041

Proposed Amendments: Rules in 635-041

Proposed Repeals: Rules in 635-041

Last Date for Comment: 9-7-12, 8 a.m.

Summary: Adopted rule authorizes the Department to issue, upon annual request from the Confederated Tribes of the Siletz Indians of Oregon (Siletz Tribe), a Siletz Tribal Clam Harvest Permit for exclusive use by the Siletz Tribal members. The methods of take, special area regulations, seasons, and any other restrictions remain identical to those pertaining to sport harvest of clams. The individual Siletz Clam Harvest Permit is valid only within Lincoln County, and does not authorize trespass upon private lands or entry or use on private or public lands where landowner permission has not been obtained, or where gathering of clams is precluded by any other statute or rule. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Adopt Rule Amendments Related to 2013 Oregon Sport Fishing Regulations.

Date: 9-7-12 **Time:** 8 a.m. **Location:** Hermiston Conference Center
415 S. Highway 395
Hermiston, OR 97838

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 496.162, 497.121 & 506.119.

Stats. Implemented: ORS 496.004, 496.009, 496.138, 496.146, 496.162, 506.109 & 506.129.

Proposed Adoptions: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039, 635-500

Proposed Amendments: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039, 635-500

Proposed Repeals: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039, 635-500

Last Date for Comment: 9-7-12, 8 a.m.

Summary: These rules modify sport fishing regulations for finfish, shellfish, and marine invertebrates for 2013. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date: 8-28-12 **Time:** 8:30 a.m. **Location:** 500 Summer St. NE, Rm. 251
Salem OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411-183.685, 411.095 & 418.005

Proposed Amendments: 413-010-0500

Last Date for Comment: 8-30-12, 5 p.m.

Summary: OAR 413-010-0500 about contested case hearings is being amended to correct its cross-reference to the policy and rules about records check requirements for relative caregivers, foster parents, adoptive resources, and other persons in the household.

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

Written comments may be submitted until August 30, 2012 at 5:00 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Child Welfare Programs, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date: 8-28-12 **Time:** 8:30 a.m. **Location:** 500 Summer St. NE, Rm. 251
Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005-419B.050

Proposed Amendments: 413-015-0470

NOTICES OF PROPOSED RULEMAKING

Proposed Repeals: 413-015-0470(T)

Last Date for Comment: 8-30-12, 5 p.m.

Summary: OAR 413-015-0470 about child protective services (CPS) assessments and notifications is being amended to modify the notification at the conclusion of a CPS assessment to be a verbal notification rather than a written notification. There will still be written notification to perpetrators of founded dispositions. This amendment further details the documentation requirements as they relate to the notification. These amendments also make permanent temporary rule changes adopted on March 12, 2012.

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

Written comments may be submitted until August 30, 2012 at 5:00 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Child Welfare Programs, 500 Summer Street NE E48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
8-28-12	8:30 a.m.	500 Summer St. NE, Rm. 251 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 418.640

Stats. Implemented: ORS 418.005, 418.630 & 418.640

Proposed Amendments: 413-120-0830

Last Date for Comment: 8-30-12, 5 p.m.

Summary: OAR 413-120-0830 about Department actions prior to the physical placement of a child in the home of the family selected to be the adoptive resource is being amended to revise the policy about when the Department may issue a foster care certificate for a selected adoptive family. This amendment allows the Department to issue a foster care certificate by accepting the paperwork submitted from the private adoption agency that completed the adoption approval certificate, and clarifies the authority of the Department to issue a foster care certificate when a home study has been completed for the family who applied to adopt. It also updates names used to identify the organization.

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

Written comments may be submitted until August 30, 2012 at 5:00 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Child Welfare Programs, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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**Department of Human Services,
Children, Adults and Families Division:
Self-Sufficiency Programs
Chapter 461**

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

Date:

8-28-12

Time:

10 a.m.

Location:

500 Summer St. NE, Rm. 251
Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: 181.537, 409.050, 410.070, 411.060, 411.070, 411.083, 411.116, 411.400, 411.404, 411.704, 411.706, 411.816, 412.006, 412.009, 412.014, 412.016, 412.024, 412.049, 412.079, 412.124, 414.231, 2011 Or. Laws 604

Other Auth.: 42 USC 602(a), 42 USC §1396r-5(d)(3), 45 CFR 98.1(a)(1), 45 CFR 98.42, 45 CFR 98.45, 45 CFR 260, 45 CFR 260.30, 45 CFR 260.31, 45 CFR 264.1, 45 CFR 400.4, 45 CFR 400.7, 45 CFR 400.22(a), 45 CFR 400.51(a), 45 CFR 400.53(a), 45 CFR 400.58(a)(7), 45 CFR 400.77, P.L. 92-336

Stats. Implemented: 181.537, 409.010, 409.050, 409.610, 410.070, 411.060, 411.070, 411.081, 411.083, 411.116, 411.117, 411.122, 411.400, 411.404, 411.704, 411.706, 411.816, 411.825, 412.001, 412.006, 412.009, 412.014, 412.016, 412.024, 412.049, 412.064, 412.079, 412.124, 414.025, 414.231, 414.826, 414.831, 657A.340, 2011 Or. Laws 604, 2012 Or. Laws 107

Proposed Amendments: 461-001-0000, 461-110-0340, 461-110-0370, 461-110-0430, 461-110-0530, 461-110-0630, 461-125-0170, 461-135-0070, 461-135-0075, 461-135-1250, 461-135-1260, 461-140-0296, 461-145-0080, 461-145-0240, 461-145-0460, 461-145-0870, 461-155-0150, 461-155-0190, 461-155-0680, 461-160-0120, 461-160-0420, 461-160-0430, 461-160-0620, 461-165-0180, 461-170-0011, 461-180-0130, 461-190-0211, 461-193-0031, 461-193-0240, 461-193-0246, 461-193-0320, 461-193-0670

Proposed Repeals: 461-001-0000(T), 461-110-0340(T), 461-110-0530(T), 461-110-0630(T), 461-125-0170(T), 461-135-0070(T), 461-135-0075(T), 461-135-1175, 461-135-1250(T), 461-135-1260(T), 461-145-0870(T), 461-155-0150(T), 461-160-0120(T), 461-160-0620(T), 461-170-0011(T), 461-180-0130(T)

Last Date for Comment: 8-30-12, 5 p.m.

Summary: OAR 461-001-0000 defining many terms used in the eligibility rules is being amended to change the definition of "caretaker relative" in the Pre-TANF, REF, SFPSS, and TANF programs so this definition follows state statute (ORS 412.001) and so other rules that use this term also follow state statute. Under this change the term caretaker relative no longer includes any blood relative, including great and great-great grandparents. This amendment also makes permanent a temporary rule change adopted on May 1, 2012.

OAR 461-110-0340 (about filing groups), 461-110-0530 (about financial groups), and 461-110-0630 (about need groups) are being amended to provide a more understandable and streamlined explanation of steps to follow in determining medical eligibility. Although these revisions will not change the outcome of a medical eligibility determination, the changes are intended to provide a smoother process and understanding of the Medical Assistance to Families (MAF) eligibility groups for eligibility staff and the public. OAR 461-145-0870 about deemed assets and spouses of non-parent caretaker relatives and 461-160-0120 about deemed assets, ineligible non-citizens, and fathers of an unborn are being amended to clarify how to treat the deemed income for the Medical Assistance for Families (MAF) eligibility groups. These amendments clarify what amount to deduct from an individual's income when they are no longer in the MAF filing group but the individual's income must be deemed back in. Although these revisions will not change the outcome of a medical eligibility determination, the changes are intended to provide a smoother process and understanding of the Medical Assistance to Families (MAF) eligibility groups for eligibility staff and the public. These rules are also being amended to make permanent changes adopted by temporary rule on May 1, 2012.

OAR 461-110-0370 about which members of a household are considered together to determine eligibility for the SNAP program is being amended to reflect the annual federal poverty level change for 165 percent of the federal poverty limit. Elderly household individuals with permanent and severe disabling conditions may be eligible to file separately from people in their household who purchase

NOTICES OF PROPOSED RULEMAKING

and prepare meals together as long as the other household members income is below 165 percent of the federal poverty level.

OAR 461-110-0430 about filing groups in the Refugee Assistance and Refugee Assistance Medical programs is being amended to clarify the policy and clearly lay out the circumstances in which a separate filing group may be created in a refugee household group. The filing group consists of individuals from the household group whose circumstances are considered in the eligibility process.

OAR 461-125-0170 about determining deprivation based on under or unemployment in the TANF and Medical Assistance Assumed (MAA) programs and OAR 461-135-0070 about eligibility requirements in the TANF, MAA, and MAF (Medical Assistance to Families) programs are being amended to implement Senate Bill 1579, Section 81 (2012) and as part of the state's budget shortfall strategy. This amendment makes a family ineligible for TANF program benefits for 120 days if the caretaker relative left employment for a reason without good cause. Prior to this amendment, the period of ineligibility had been 60 days. These amendments also make permanent changes adopted by temporary rule on May 1, 2012.

OAR 461-135-0075 is being amended to address budget constraints and implement SB 1579 (2012) by changing how time on TANF is counted toward the 60-month time limit for eligibility. Under this amendment, months may be counted and are no longer exempt when the Oregon unemployment rate is equal to or greater than seven percent. Additionally, two-parent households funded with state funds will now accumulate time toward time limits. This amendment also clarifies that adults and minor parent heads of households with 60 countable months in any state will no longer be eligible for TANF, unless subject to certain exemptions. This rule is also being amended to state that months in which individuals receive a Jobs Participation Incentive food benefit do no count toward time limits. This rule is also being amended to make permanent the temporary rule changes adopted on May 1, 2012.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program is being repealed because this program has been transferred to the Oregon Health Authority, Public Health Division, and its policies are set out at OAR 333-052-0030, 333-052-0040, 333-052-0041, 333-052-0042, 333-052-0100. This repeal makes permanent the suspension of this rule that occurred on June 8, 2012.

OAR 461-135-1250 about specific client eligibility and participation requirements in the Post-Temporary Assistance for Needy Families (Post-TANF) program is being amended to state that program funding ended on April 30, 2012 there are no benefits after that date. This amendment also does not allow continuing benefits in the Post-TANF program after April 30, 2012 for pending or submitted hearing requests. This amendment makes permanent temporary rule changes adopted on April 12 and April 13, 2012.

OAR 461-135-1260 about the specific requirements for the Job Participation Incentive (a \$10 monthly food benefit) and OAR 461-170-0011 about changes that must be reported for the Job Participation Incentive are being amended to allow SNAP cases to be considered without being restricted by the reporting system. OAR 461-135-1260 is also being amended to clarify and expand the kinds of employment and self-employment that are counted to be eligible for JPI. OAR 461-135-1260 is also being amended to remove redundant requirements. These amendment also make permanent the temporary rule changes that were effective on May 1, 2012 and May 24, 2012.

OAR 461-140-0296 about the length of disqualification due to asset transfers in the General Assistance, General Assistance Medical, Oregon Supplemental Income Program, and Oregon Supplemental Income Program Medical programs is being amended to adjust its standard to reflect the annual federal cost of care cost-of-living adjustments that happen every other October. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

OAR 461-145-0080 about the treatment of child support and cash medical support to determine eligibility for the Department's

public assistance, medical and SNAP programs is being amended to clarify how to count in-kind income when child support payments are made directly to the financial group or to a third-party for rent, mortgage, utilities, or child care.

OAR 461-145-0240 about income-producing sales contracts is being amended to change current policy regarding the treatment of income-producing sales contracts in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This amendment identifies situations when the equity value of an income-producing sales contract is counted as a resource and when it is excluded. Currently the equity value of all income-producing sales contracts is excluded. Additionally, this amendment identifies situations when the equity value of an income-producing sales contract can result in transfer of asset penalties.

OAR 461-145-0460 about the sale of a resource is being amended to change current policy regarding the treatment of the proceeds from the sale of a home in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This amendment identifies situations when the proceeds (including principal and interest) are counted as income, resource or excluded. Currently proceeds (regardless of whether they are income or principal) are either excluded or counted as a resource (except for GAM - if the proceeds put the benefit group over the resource limit they are counted as periodic or lump-sum income).

OAR 461-155-0150 about the child care eligibility standard, payment rates, and copayments is being amended to increase the minimum monthly copayment from \$25 to \$27 and to increase copayments by 10 percent for families receiving Employment Related Day Care. This increase addresses part of the Department's shortfall in the current biennium as part of the legislative and Department 2011-13 budget rebalance plan. These amendments make permanent the temporary rule changes to these rates that took effect on May 1, 2012. This rule is also being amended to change how rounding occurs during the calculation of the copayment.

OAR 461-155-0190 about income and payment standards in the SNAP program is being amended to reflect changes in the countable and adjusted income limit, and the SNAP payment standard or Thrifty Food Plan. This rule will also be amended to reflect an increase in the monthly maximum benefit amount, if there is an increase.

OAR 461-155-0680 about the supplemental telephone allowance in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to remove references to Link-Up America, which are no longer applicable, and to clarify that to receive telephone assistance, a client may be either an SSI recipient, a client with an adjusted income less than the OSIPM program standard (under OAR 461-155-0250), or a client receiving in-home services if the client meets certain conditions. This language change clarifies that a client does not have to meet all three conditions in order to be eligible.

OAR 461-160-0420 about the shelter cost calculation for the shelter deduction in the SNAP program is being amended to reflect the new utility standards effective October 1, 2012 for the 2013 federal fiscal year. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the SNAP Program State Plan. There are four utility allowances. The full utility allowance (FUA) is for any household that is responsible for paying a heating or cooling cost, or receives any benefits from Low Income Heating and Energy Assistance (LIHEAP) programs. The limited utility allowance (LUA) is used for those households with more than one non-heating/cooling cost. The individual utility allowance (IUA) for households with a single non-heat and non-telephone cost. The telephone utility allowance (TUA) is for households with only a telephone cost.

NOTICES OF PROPOSED RULEMAKING

OAR 461-160-0430 about income deductions in the SNAP program is being amended to reflect the new standard deduction for the 2013 federal fiscal year.

OAR 461-160-0620 about income deductions and liability for OSIPM clients in long-term care is being amended to reflect the federal changes in the amounts used when calculating the maintenance needs allowance and the dependent income allowance deducted from the income of an institutionalized spouse. This amendment makes permanent a temporary rule change effective July 1, 2012.

OAR 461-165-0180 about eligibility of child care providers is being updated to add timelines for providers to return the child care provider listing form to the Department. This change will require the provider to submit a completed listing form within 30 calendar days. This rule is also being amended to indicate that providers must notify the Department before using someone else to supervise a child. The rule had indicated this only applied to temporary changes.

OAR 461-180-0130 about the effective date for restoring benefits is being amended as part of the expansion of JPI. This amendment clarifies that restoration of benefits for JPI is limited to months under which the JPI rule makes the individual eligible. Parents in the newly expanded group will not receive restored JPI benefits prior to May of this year. This amendment also makes permanent the temporary rule changes that were effective on May 24, 2012.

OAR 461-190-0211 about the case plan activities and standards for support service payments for the Department's Temporary Assistance for Needy Families Job Opportunity and Basic Skills (JOBS) program is being amended to adjust and clarify program restrictions implemented July 1, 2011 as a result of budget reductions from the 2011 legislative session. The monthly family maximum imposed for support services, including child care, is being removed, including for teen parents. This amendment also clarifies the rule in the context of removing maximum amounts. These amendments also make permanent temporary rule changes adopted on April 6 and May 23, 2012.

OAR 461-193-0031 about eligibility requirements for the Refugee Case Services Project (RCSP) is being amended to clarify when an RCSP case may be opened when a newly arrived adult refugee is rejoining one or more family members in the United States.

OAR 461-193-0240 about exemptions from participating in the New Arrival Employment Services (NAES) program is being amended to update its exempt categories by aligning with the exempt categories that apply in the TANF program in OAR 461-130-0310.

OAR 461-193-0246 about employment and training incentives in the New Arrival Employment Services (NAES) program is being amended to limit the number of incentives presently being provided. The Refugee Program is discontinuing training and 30-day employment incentives.

OAR 461-193-0320 about effective dates for cash assistance in the Refugee Case Service Project is being amended to clarify the dates of cash eligibility, and to comply with 45 CFR 400.77 by specifying the cash eligibility date for an employable applicant who has quit a job or refused a job without good cause within 30 consecutive calendar days prior to the application as well as the cash eligibility date for a benefit recipient whose disqualification is being lifted.

OAR 461-193-0670 is being amended to remove statements about client requirements because its policy about client requirements is redundant and covered in another rule, OAR 461-193-0010.

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

Written comments may be submitted until August 30, 2012 at 5:00 p.m. Written comments may be e-mailed to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Self-Sufficiency Programs, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

Department of Justice Chapter 137

Rule Caption: Incarcerated obligors; Temporary employment-related modifications; Suspending support for obligor receiving cash assistance.

Stat. Auth.: ORS 25.245, 180.345, 416.455

Stats. Implemented: ORS 25.080, 25.245, 25.287, 25.321-25.343, 107.108, 107.135, 416.425,

Proposed Amendments: 137-055-3300, 137-055-3430, 137-055-5400

Proposed Repeals: 137-055-5420

Last Date for Comment: 8-31-12, 5 p.m.

Summary: OAR 137-055-3300 is being amended to clarify the process for incarcerated obligors.

OAR 137-055-3430 is being amended to clarify the process for temporary employment-related modifications.

OAR 137-055-5400 is being amended to clarify the process for an obligor receiving cash assistance.

OAR 137-055-5420 is being repealed because the process is being consolidated into OAR 137-055-5400.

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4700

Department of Oregon State Police Chapter 257

Rule Caption: Modifies OAR 257-080-0000 to be in compliance with repeal of ORS 181.290 July 2011.

Date: 8-20-12

Time: 3:30 p.m.

Location: 255 Capitol St.

Basement Conference Rm. A
Salem, OR 97310

Hearing Officer: Sgt Jeff Lewis

Stat. Auth.: ORS 181.280

Stats. Implemented: ORS 181.290-181.340

Proposed Adoptions: 257-080-0050, 257-080-0055

Proposed Amendments: 257-080-0000, 257-080-0005, 257-080-0010, 257-080-0015, 257-080-0020, 257-080-0025, 257-080-0030, 257-080-0035, 257-080-0040, 257-080-0045

Last Date for Comment: 8-20-12, Close of Hearing

Summary: Legislative changes in July 2011 require that we clarify rules outlining the process afforded sworn, unrepresented members of the department during consideration of their removal from state service.

Rules Coordinator: Shannon Peterson

Address: Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310

Telephone: (503) 934-0183

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Remove references to retired police officer certification.

Stat. Auth.: ORS 181.640, 181.644, 183.341, 181.534, 181.612 & 206.015

Stats. Implemented: ORS 181.640, 181.644, 183.341, 181.534, 181.612 & 206.015

Proposed Amendments: 259-008-0010, 259-013-0220, 259-013-0230

Last Date for Comment: 8-21-12, Close of Business

NOTICES OF PROPOSED RULEMAKING

Summary: OAR 259-008-0068 (Retired Police Officer) was repealed May 1, 2012. These proposed rule changes remove all references to the obsolete program. Housekeeping changes were also made for clarity.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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Rule Caption: Update DOC BCC program/hours to correspond with DPSST course; Clarify documentation requirements.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-008-0025

Last Date for Comment: 8-21-12, Close of Business

Summary: In January 2012 DPSST began delivering the new six-week basic corrections program, which is now the state standard for basic corrections training. The new program represents a substantial restructuring of basic corrections training, both with areas of additional instruction and with a significant increase in participatory learning activities. Specifically, 51 hours of reality based scenarios and eight hours of problem-based learning exercises were added to the program.

This proposed rule increases the overall minimum course hours for DOC BCC to correspond with the new DPSST course and outlines the required program restructuring to reflect those updates. The proposed rule also clarifies the documentation required for purposes of determining equivalency of the overall program structure and of training delivery.

Rules Coordinator: Linsay Hale

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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Department of Transportation Chapter 731

Rule Caption: Records, Maintenance, Right to Audit Records.

Date:	Time:	Location:
8-20-12	1 p.m.	ODOT Salem Materials Lab Large Conference Rm. 800 Airport Rd., Salem OR

Hearing Officer: Steve Cooley

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.030, 279C.375 & 279C.440

Proposed Amendments: 731-005-0780

Last Date for Comment: 8-20-12, Close of Hearing

Summary: Under current rules and contract specifications, contractors on ODOT public improvement projects must maintain certain records and allow ODOT access to them for inspection and audit. ODOT's expectation has been that records retained by contractors should include bidding records and contractor job-cost records. However, under current rules and contract specifications, ODOT's obtaining access from contractors to retained records is a reactive process that is for the most part completely dependent on the goodwill and discretion of the contractor. Recent claims disputes have demonstrated a need to clarify contractors' legal obligations when it comes to recordkeeping and claims substantiation and solidify ODOT's legal authority to access contractor business records to ensure that the public contracting process remains transparent and competitive. Accordingly, ODOT proposes to revise its administrative rules and, eventually, its standard contract specifications to specifically identify those records, contracts must maintain in order to substantiate contractor claims. The proposed revisions to ODOT's rules should provide ODOT with broad authority to obtain access to these contractor records and an appropriate enforcement mechanism.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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

Rule Caption: Restrictions Added to Commercial Driver License or Instruction Permit and Cancellation Action.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.100, 809.310 & 809.415

Other Auth.: Title 49, CFR Section 383.153

Stats. Implemented: ORS 807.040, 807.045, 807.100, 807.150 & 809.415

Proposed Amendments: 735-063-0065, 735-063-0067, 735-063-0070

Last Date for Comment: 8-21-12, Close of Business

Summary: FMCSR section 383.153 requires that states place certain restrictions on a commercial driver license (CDL) or a commercial instruction driver permit if the driver meets particular physical or medical criteria. On January 30, 2012, changes to the federal regulations related to proof of medical qualification requirements for CDL holders and commercial instruction driver permit holders went into effect. A "V" restriction is required if the driver has a medical variance. DMV proposes to amend OAR 735-063-0065 to specify when a "V" restriction is required. For more clarity and consistency, DMV proposes to also specify when a "K" restriction is required in OAR 735-063-0065 and to remove that information from OAR 735-063-0070. DMV also proposes to amend OAR 735-063-0067 to authorize DMV to cancel a CDL or commercial instruction driver permit if the person does not meet DMV's requirement to have a "V" or "K" restriction added.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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Rule Caption: Driving Privilege and Identification Card Cancellation and Suspension Actions Under ORS 809.310.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: ORS 809.310

Proposed Amendments: 735-070-0004

Last Date for Comment: 8-21-12, Close of Business

Summary: ORS 809.310 authorizes, but does not require, the suspension and cancellation of driving privileges or an identification card when DMV determines that a person has committed an act listed in ORS 809.310(3). OAR 735-070-0004 establishes the specific situations where DMV will suspend and cancel a person's driving privileges or identification card, including those situations where the person has provided false or fictitious information. A person may obtain an Oregon driver license or identification card by providing a false or fictitious address to DMV for various reasons, including avoidance of DEQ vehicle emissions testing requirements or avoidance of out-of-state sales tax when purchasing a new vehicle in Oregon. DMV has concluded that false or fictitious address information does not impact highway or public safety and that the potential penalties imposed for improperly registering a vehicle are sufficient deterrents. DMV proposes to amend OAR 735-070-0004 to clarify that it will cancel, but not suspend, driving privileges or an identification card when the person has given a false or fictitious address. This proposed amendment will align administrative rule with current DMV policy and procedure.

DMV also proposes to update a statutory citation in Section (1) of the rule, which results from amendments to ORS 807.400.

Rules Coordinator: Lauri Kunze

NOTICES OF PROPOSED RULEMAKING

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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

Rule Caption: Locations and Criteria of Variable Interstate Speed Limits.

Stat. Auth.: ORS 184.616, 184.619, 810.010 & 810.180

Stats. Implemented: ORS 810.180

Proposed Amendments: 734-020-0019

Last Date for Comment: 8-21-12, Close of Business

Summary: ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads, including interstate highways. As amended, 734-020-0019 will not show any current locations of variable speed limits on the Interstates because ODOT has decided that advisory speeds are sufficient for previous listed locations.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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**Land Conservation and Development Department
Chapter 660**

Rule Caption: Portland metropolitan area land use and transportation scenario planning.

Date:	Time:	Location:
9-19-12	1:30 p.m.	Metro Council Chambers 600 NE Grand Ave. Portland, OR 97232
9-20-12	9 a.m.	DLCD Basement Hearing Rm. 635 Capitol St. Salem, OR 97301
11-15-12	9 a.m.	McMinnville Civic Hall 200 NE 2nd St. McMinnville, OR 97128

Hearing Officer: Commissioner Jerry Lidz; LCDC

Stat. Auth.: ORS 197.040, 2009 OL Ch. 865 (House Bill 2001) SS 37(8)

Stats. Implemented: 2009 OL Ch. 865 (House Bill 2001) SS 37(8)

Proposed Adoptions: 660-044-0040, 660-044-0045, 660-044-0050, 660-044-0055, 660-044-0060, 660-044-0065, 660-044-0070

Proposed Amendments: 660-044-0000, 660-044-0005

Last Date for Comment: 9-20-12, 9 a.m.

Summary: These rules carry out HB 2001, adopted by the 2009 Legislature, that directs the commission to adopt rules establishing a scenario planning process for the Portland metropolitan area by January 1, 2013. The proposed rules would apply only to the Portland metropolitan area.

These rules establish a process for development and cooperative selection of a preferred land use and transportation scenario for the Portland metropolitan area to aid in meeting state goals to reduce greenhouse gas emissions from light vehicle travel.

The rules provide guidance to Metro and local governments in the Portland metropolitan area about development and evaluation of alternative scenarios, selection of a preferred land use and transportation scenario, and a process for implementation of the preferred scenario through the regional framework plan, and local comprehensive plans, including transportation system plans and land use regulations. The rules also establish a schedule for initial adoption of a preferred scenario and a cycle for updating the preferred land use and transportation scenario.

Rules Coordinator: Casaria Tuttle

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

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

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Rule Caption: Designate areas and establish regulatory standards for marine renewable energy development within the territorial sea.

Date:	Time:	Location:
9-20-12	9 a.m.	DLCD Basement Hearing Rm. 635 Capitol St. Salem, OR 97301
11-15-12	9 a.m.	City Council Chambers McMinnville Civic Hall 200 NE 2nd St. McMinnville, OR 97128

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 196.471

Proposed Amendments: Rules in 660-036

Last Date for Comment: 11-15-12, 9 a.m.

Summary: The proposed rule amendment will adopt by reference amendments to the Territorial Sea Plan authorized by ORS 196.443. ORS 196.471 requires the Land Conservation and Development Commission to review such amendments to the Territorial Sea Plan and, upon making of findings, adopt the amendments as part of the Oregon Coastal Management Program. The amendment will revise the Territorial Sea Plan Part Five by incorporating maps that designate areas where marine renewable energy development may be sited, and the standards and review criteria that would be applied by state agencies for conducting their review of project proposals within those designated areas. The maps and standards will be incorporated into the existing Plan as an appendix.

Rules Coordinator: Casaria Tuttle

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

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

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**Oregon Department of Education
Chapter 581**

Rule Caption: Identifies factors for when Department will initiate audit of school district or education service district

Stat. Auth.: ORS 327.141

Stats. Implemented: ORS 327.141

Proposed Adoptions: 581-023-0036

Last Date for Comment: 8-21-12, 5 p.m.

Summary: HB 2280 (2011) directed the State Board of Education to identify factors for when to initiate an audit. The proposed rule identifies factors to be used by the Department of Education when deciding to initiate a financial audit or a performance audit of a school district or education service district.

HB 2280 also allows the Secretary of State to initiate a financial audit or performance audit of a district based on factors identified by the Secretary by rule. Additionally, the Department may contract with the Secretary of State to conduct an audit. Due to this, the Department worked with the Secretary of State to identify the factors identified in the rule so that there was consistency between the two agencies.

Rules Coordinator: Cindy Hunt

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

Telephone: (503) 947-5801

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**Oregon Education Investment Board
Chapter 705**

Rule Caption: Rules regarding procedure, achievement compacts and the authority of the Chief Education Officer.

NOTICES OF PROPOSED RULEMAKING

Date: 8-21-12
Time: 1 p.m.
Location: Oregon State Library
250 Winter St. NE
Salem, OR

Hearing Officer: Seth Allen

Stat. Auth.: Enrolled Senate Bill 1581 (Section 14, Chapter 36, Oregon Laws 2012), enacted in the 2012 Regular Session of the 76th Oregon Legislative Assembly with a declaration of emergency & signed by the Governor on March 6, 2012.

Stats. Implemented: Enrolled Senate Bill 1581 (Section 14, Chapter 36, Oregon Laws 2012)

Proposed Adoptions: 705-001-0000, 705-001-0005, 705-001-0010, 705-010-0005, 705-010-0010, 705-010-0015, 705-010-0020, 705-010-0025, 705-010-0030, 705-010-0035, 705-010-0040, 705-010-0045, 705-010-0050, 705-010-0055, 705-010-0060, 705-010-0065, 705-010-0070, 705-010-0075, 705-050-0010

Last Date for Comment: 08-31-2012 Close of Business

Summary: 705-001-0000 – Regarding notice of proposed rule.

705-001-0005 – Regarding model rules of procedure.

705-001-0010 – Regarding establishing fees for public records.

705-010-0005 – Regarding definitions.

705-010-0010 – Regarding parties to achievement compacts.

705-010-0015 – Regarding terms of achievement compacts.

705-010-0020 – Regarding optional local priorities.

705-010-0025 – Regarding guidance.

705-010-0030 – Regarding distribution of compacts to educational entities.

705-010-0035 – Regarding completion and execution of achievement compacts.

705-010-0040 – Regarding data for student groups.

705-010-0045 – Regarding communications.

705-010-0050 – Regarding modifications of achievement compacts.

705-010-0055 – Regarding receipt and acceptance of achievement compacts.

705-010-0060 – Regarding the authority of Chief Education Officer relating to achievement compacts.

705-010-0065 – Regarding end-of-year reports.

705-010-0070 – Regarding achievement compact advisory committees.

705-010-0075 – Regarding recommendations from state associations.

705-050-0010 – Regarding appointment of technical advisory committees and work groups

Rules Coordinator: Seth Allen

Address: Oregon Education Investment Board, 155 Cottage St. NE, 3rd Floor, Salem, OR 97301

Telephone: (503) 378-8213

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Treatment of Allergic Response.

Date: 8-23-12
Time: 10 a.m.
Location: Portland State Office Bldg.
800 NE Oregon St., Rm. 1E
Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 433.810

Other Auth.: 2011 OL Ch. 70

Stats. Implemented: ORS 433.800, 433.805, 433.810, 433.815, 433.820, & 433.825

Proposed Adoptions: 333-055-0006, 333-055-0021

Proposed Amendments: 333-055-0000, 333-055-0015, 333-055-0030, 333-055-0035

Last Date for Comment: 8-24-12, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division is proposing to permanently adopt and amend Oregon Administrative

Rules relating to the treatment of allergic response in response to legislation passed in 2011 (SB 104, sections 8 & 9) along with making updates to outdated language and processes. The legislation that passed allows the training to be taught by an emergency medical service provider meeting requirements established by the Authority, specifies the proper administration of epinephrine, and lowers the eligibility training age from 21 to 18 years.

The Public Health Division is responsible for the development of an educational training protocol on the treatment of allergic response to be used by providers to train individuals who have, or reasonably expect to have, responsibility for or contact with persons as a result of the individual's occupation or volunteer status.

These rules were last updated in 2004 and the proposed changes address the following:

- Create definitions;
- Clarifies who may conduct the training;
- Creates a section on who is eligible to receive training; and
- Updates terminology and process for the training and statements of training completion.

Rules Coordinator: Brittany Sande

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

Rule Caption: Primacy to enforce federal regulations regarding public drinking water systems.

Date: 8-23-12
Time: 2 p.m.
Location: Portland State Office Bldg.
800 NE Oregon St. Rm. 1D
Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.175, 448.273 & 448.279

Proposed Amendments: 333-061-0020, 333-061-0032, 333-061-0036

Last Date for Comment: 8-24-12, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division is proposing to amend Oregon Administrative Rules 333-061-0020, 333-061-0032, and 333-061-0036 related to public water systems to ensure that these rules are no less stringent than corresponding federal regulations as required by the U.S. Environmental Protection Agency (EPA) to grant to Oregon primary enforcement responsibility ("Primacy") for federal safe drinking water regulations. The rule amendments required by EPA are detailed in a May 17, 2011 letter to the Authority, available upon request.

Rules Coordinator: Brittany Sande

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

Oregon Liquor Control Commission Chapter 845

Rule Caption: Implement statutory change allowing any state's law violations to be used as license refusal basis.

Date: 8-23-12
Time: 10 a.m.
Location: 9079 SE McLoughlin
Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.313

Proposed Amendments: 845-005-0325

Last Date for Comment: 9-6-12, 5 p.m.

Summary: This rule describes the Commission's reasons related to the applicant's qualifications for which the Commission will deny a license unless the applicant shows good cause to overcome the criteria. The 2011 legislature passed Senate Bill (SB) 36, effective January 1, 2012. SB 36 amended ORS 471.313 with regards to law

NOTICES OF PROPOSED RULEMAKING

violations as a license refusal basis. The statute still requires a conviction and all law violations must be related to the fitness and ability of the applicant to lawfully carry out activities under the license in order to be used as a refusal basis. The statutory amendment expanded the laws in question to those of any state, not just Oregon laws. Staff recommends amending OAR 845-005-0325 (5) to harmonize the rule language with the statutory language now in effect.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Rule Caption: Implement statutory change allowing nonprofits to auction or raffle alcohol once per year without license.

Date:	Time:	Location:
8-28-12	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, 471.030, 471.040, 471.190 & 471.730(1) & (5)

Stats. Implemented: ORS 471.190, 471.360 & 471.482

Proposed Amendments: 845-005-0440

Last Date for Comment: 9-11-12, 5 p.m.

Summary: This rule describes the required qualifications and privileges associated with the Commission's issuance of a Temporary Sales License (TSL). The 2012 legislature passed House Bill (HB) 4047, effective March 5, 2012. HB 4047 amended ORS 471.162 to expand a nonprofit or charitable organization's ability to conduct certain activities without a license. They can now conduct raffles as well as auctions once a year without a license and the alcohol product can now be distilled spirits as well as malt beverages or wine. For this reason, staff recommends the deletion of the current section (6) regarding just raffles. More details about what is allowed with regard to auctions and raffles will be explained in our licensing materials. Staff is also recommending a few minor housekeeping amendments while this rule matter is open.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Oregon University System Chapter 580

Rule Caption: Amendment is housekeeping to define what constitutes a "major traffic offense."

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Proposed Amendments: 580-040-0030

Last Date for Comment: 8-15-12, 12 p.m.

Summary: Oregon Administrative Rule 580-040-0030 governs vehicle safety, including standards by which vehicles may be used for officially-sanctioned activities of the Board and OUS and its institutions. The administrative rule contains a reference to an Oregon Revised Statute that has been repealed. This proposed amendment is a housekeeping amendment in order to define what constitutes a "major traffic offense" for purposes of the rule without a cross-reference to a repealed statute.

Rules Coordinator: Marcia M. Stuart

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

Telephone: (541) 346-5749

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Rule Caption: Compliance with COA ruling on the use of concealed weapons on OUS property.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Proposed Amendments: 580-022-0045

Last Date for Comment: 8-15-12, 12 p.m.

Summary: On September 28, 2011, the Oregon Court of Appeals invalidated the Board's above-stated rule on firearms, holding that it was preempted by the Oregon Legislature as a "regulation." While the Court of Appeals observed that this Board possessed broad authority to control its property, it held that an administrative rule – which carries the 'force of law' – attempted to "regulate" firearms in a way that the Legislature intended to preempt.

This action revises the language of the administrative rule in question to comply with the Oregon Court of Appeals decision by removing reference to firearms.

Rules Coordinator: Marcia M. Stuart

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

Telephone: (541) 346-5749

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Oregon University System, Portland State University Chapter 577

Rule Caption: Repeal obsolete harassment/discrimination rules to comply with the new University Policy addressing these issues.

Stat. Auth.: ORS 351, 351.070 & 352.360

Stats. Implemented: ORS 352.360

Proposed Repeals: Rules in 577-032 (577-032-0010 – 577-032-0080), 577-001-0125

Last Date for Comment: 8-21-12, Close of Business

Summary: PSU has adopted a new, comprehensive Prohibited Discrimination and Harassment Policy, available at www.pdx.edu/ogc/policy-library. The repeal of these obsolete rules is necessary to conform with the new University Policy.

Rules Coordinator: Lorraine D. Baker

Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207-0751

Telephone: (503) 725-2656

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Oregon University System, University of Oregon Chapter 571

Rule Caption: Institute random student-athlete drug testing and provide for safe-reporting program.

Date:	Time:	Location:
8-23-12	2 p.m.	Walnut Rm., EMU University of Oregon Eugene, OR

Hearing Officer: Lisa Peterson

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.008

Proposed Adoptions: 571-004-0038

Proposed Amendments: 571-004-0020, 571-004-0025, 571-004-0030, 571-004-0050, 571-004-0055

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

Summary: The proposed amendments and new rule to the University of Oregon's drug testing rules emphasize that illicit and performance enhancing drugs are not allowed, provide for random drug testing, outline sanctions for positive drug tests, outline drug testing methods, and encourage self-reporting and treatment for drug use. These amendments and new rule are necessary for the following reasons. First, the University seeks to educate its student-athletes about the detrimental effects of drug use on their health, safety, academic work, and future careers. Second, the University must abide by NCAA rules and uphold the integrity of its Athletic Department. Third, because student-athletes represent the University in various settings, the University has an interest in promoting drug-free and healthful lifestyles to all of the community through its Athletics programs. Fourth, the University must minimize the risk of injury caused by student-athlete drug use in intercollegiate athletics. Fifth, the University must be able identify present or potential substance use and provide treatment and rehabilitation for its student-athletes. Sixth, the University seeks to maintain a fair and drug-free sport, in which no

NOTICES OF PROPOSED RULEMAKING

student-athlete uses or feels pressured to use performance enhancing drugs or any other illegal substance.

Rules Coordinator: Amanda Hatch

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

Telephone: (541) 346-3082

Parks and Recreation Department

Chapter 736

Rule Caption: Prohibits possession of use of alcohol beverages at Iwetemlaykin State Heritage Site.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Proposed Amendments: 736-010-0060

Last Date for Comment: 8-31-12, 4 p.m.

Summary: Since the park opened alcohol has been banned at Iwetemlaykin State Heritage Site. The temporary ban was placed by the park manager as a result of tribal concerns raised during the planning process for the park. The site is a very special place and as such it was determined that it should be one of the few state park properties where alcohol is prohibited.

While the temporary ban placed by the park manager has been effective, OPRD made a commitment during the park planning process to seek a permanent ban in rule. This rule amendment will add Iwetemlaykin State Heritage Site to the list of parks where possession or use of alcoholic beverages is prohibited.

Rules Coordinator: Vanessa DeMoe

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301

Telephone: (503) 986-0719

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Amendments to OAR 860-032-0007 to Address Call Termination Issues. (AR 566)

Date:
8-22-12

Time:
9:30 a.m.

Location:
Public Utility Commission
550 Capitol St. NE
Main Hearing Rm.
Salem, OR 97301

Hearing Officer: Allan J. Arlow

Stat. Auth.: ORS Ch.183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.050, 759.225 & 759.690

Proposed Amendments: 860-032-0007

Last Date for Comment: 9-28-12, Close of Business

Summary: Amendments to OAR 860-032-0007 are proposed to address the problem of long distance calls not being completed to rural areas in Oregon at the same rate at which long distance calls are completed to urban areas. The proposed amendments prohibit intrastate telecommunications certificate holders from blocking, choking, reducing or restricting traffic in any way; subjecting any person, locality or exchange to undue or unreasonable discrimination; or engaging in deceptive or misleading practices. Further, the amendments make certificate holders liable for the actions of their underlying carriers. The proposed amendments provide clearly stated call termination expectations for certificated telecommunications providers and the framework for the PUC to hold certificate holders accountable to complete long distance calls to rural areas at the same rate at which they complete to urban areas.

Rules Coordinator: Diane Davis

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

Telephone: (503) 378-4372

ADMINISTRATIVE RULES

Appraiser Certification and Licensure Board Chapter 161

Rule Caption: Adoption of permanent rules regarding USPAP, and registration and enforcement of Appraisal Management Companies.

Adm. Order No.: ACLB 1-2012

Filed with Sec. of State: 7-2-2012

Certified to be Effective: 7-3-12

Notice Publication Date: 6-1-2012

Rules Adopted: 161-500-0000, 161-510-0010, 161-510-0030, 161-520-0005, 161-520-0010, 161-520-0020, 161-520-0030, 161-520-0040, 161-520-0045, 161-520-0050, 161-520-0055, 161-520-0060, 161-530-0010, 161-530-0020, 161-530-0030, 161-530-0040, 161-540-0010, 161-550-0010, 161-550-0020, 161-560-0010, 161-560-0020, 161-570-0010, 161-570-0015, 161-570-0020, 161-570-0030, 161-570-0045, 161-570-0050

Rules Amended: 161-002-0000, 161-025-0060

Subject: Permanently adopts Oregon Administrative Rule 161, Division 500, Rule 0000 regarding definitions; Division 510, Rule 0010 regarding application and registration fees, and Rule 0030 regarding Miscellaneous Fees; Division 520, Rule 0005 regarding business name registration, Rule 0010 regarding registration requirements, Rule 0020 regarding appraiser competency, Rule 0030 regarding renewal or reactivation of registration, and Rule 0040 regarding change or addition of subject individual; Rule 0045 regarding change in business name, Rule 0050 regarding change of individual ownership, Rule 0055 regarding change of address, and Rule 0060 regarding termination or cancellation of Surety Bond or Letter of Credit; Division 530, Rule 0010 regarding criminal records check, Rule 0020 regarding background check authorizations and fingerprint card, Rule 0030 regarding potentially disqualifying crimes, and Rule 0040 regarding reporting litigation involving subject individuals; Division 540, Rule 0010 regarding training; Division 550, Rule 0010 regarding annual reports, Rule 0020 regarding records and real estate appraisal activity report retention requirements; Division 560, Rule 0010 regarding audits, and Rule 0020 regarding audit standards; Division 570, Rule 0010 regarding duty to cooperate, Rule 0015 regarding appraisal review, Rule 0020 regarding forwarding complaints, Rule 0030 regarding appraisal management company complaints, Rule 0045 regarding appraisal management company investigations and audits, and Rule 0050 regarding separate offense and violation.

Permanently Amends Oregon Administrative Rule 161, Division 2, Rule 0000 regarding definitions; and Division 025, Rule 0060 regarding appraisal standards and USPAP.

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

161-002-0000

Definitions

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

(1) “Accredited College or University” means a college or university that is accredited by the Commission on Colleges, or by an accrediting agency that is recognized by the U.S. Department of Education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) “Direct Supervision” of an appraiser assistant means:

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

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

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

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

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

(17) “Federal Financial Institution Regulatory Agency” means:

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

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

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

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

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

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

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

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

ADMINISTRATIVE RULES

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

(26) "Preparation" means compiling data, including reviewing and adopting such compiled data as one's own.

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

(28) "Professional real estate activity" has the meaning defined in ORS 696.010.

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

(30) "Real estate appraisal activity" has the meaning defined in ORS 674.100.

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

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

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

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

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

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

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

(38) "Transaction Value" means:

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

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

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

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

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

(39) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the standards adopted and published by the Appraisal Standards Board of the Appraisal Foundation dated April 27, 1987, as amended January 1, 2012.

(40) "Workfile" means "workfile" as defined in USPAP.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0000; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 5-2009(Temp), f. 12-15-09, cert. ef. 1-1-10 thru 6-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 4-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-025-0060

Appraisal Standards and USPAP

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

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

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

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

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

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

(7) The "Uniform Standards of Professional Appraisal Practice", 2012-2013 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2012, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

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

(9) All licensees must comply with USPAP and all other applicable administrative rules in OAR Chapter 161 in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate appraisal activity under ORS 674.100(2)(h).

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

(a) Board member;

(b) Employee; or

(c) Contractor or volunteer serving at the request of the Board.

(11) When more than one report is issued for an appraisal, an appraisal review, or appraisal consulting assignment, each report must clearly disclose the issuance of all prior reports.

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

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 5-2009(Temp), f. 12-15-09, cert. ef. 1-1-10 thru 6-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 4-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-500-0000

Definitions

In addition to the definitions in ORS 674.200, and as used in OAR Chapter 161 Divisions 500 through 570, the following terms (whether capitalized or not) shall have the following meanings:

(1) "Appraisal Report" has the same meaning as defined in OAR 161-002-0000.

(2) "Assignment" means:

(a) An agreement between an appraiser and a client to perform a valuation service;

(b) The valuation service that is provided as a consequence of such an agreement.

ADMINISTRATIVE RULES

(3) "Audit" or "auditing" means a formal or official examination and verification of the accounts, correspondence, memoranda, papers, books and other records of an appraisal management company for compliance with ORS 674.200 through ORS 674.250.

(4) "Board" means the Appraiser Certification and Licensure Board established under ORS 674.305.

(5) "Competency" or "competent" refers to the Competency Rule as defined in the Uniform Standards of Professional Appraisal Practice (USPAP).

(6) "Complaint" means any written document alleging a deficiency on the part of the appraiser or appraisal management company in the completion of an assignment for real property in Oregon.

(7) "Subject Individual" means:

(a) A person designated as the controlling person as defined in ORS 674.200(8);

(b) An individual with an ownership interest of 10 percent or more of an appraisal management company; or

(c) In cases where ownership interest of 10 percent or more of the appraisal management company is held by an entity other than an individual:

(A) An individual who wholly owns a corporation that owns 10 percent or more of an appraisal management company;

(B) An individual wholly owning and serving as the only general partner in a limited partnership that owns 10 percent or more of an appraisal management company;

(C) An individual wholly owning and managing a limited liability company that owns 10 percent or more of an appraisal management company; or

(D) An individual who wholly owns any other type of business entity that owns 10 percent or more of an appraisal management company.

(8) "System" means an organized or established procedure or method.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-510-0010

Application and Registration Fees

An appraisal management company that has not previously conducted business in Oregon, shall pay to the Board:

(1) A nonrefundable application fee of \$1,000; and

(2) A nonrefundable registration fee of \$1,500.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-510-0030

Miscellaneous Fees

(1) Duplicate Registration — \$10.

(2) Late Renewal — \$100.

(3) Annual Appraisal Subcommittee (ASC) Fee — Actual Fee.

(4) Fingerprint and Background Checks — Actual Fee.

(5) Change or Addition of Subject Individual — \$100.

(6) Change of Business Name — \$100.

(7) Registration History — \$40.

(8) Late Annual Report — \$100.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0005

Business Name Registrations

Before conducting business in Oregon, the appraisal management company must be registered with the Oregon Secretary of State's Corporation Division. For the purpose of this rule, "business name" means an assumed name or the name of a business entity such as a corporation, partnership, limited liability company, or other business entity recognized by law. The appraisal management company must maintain the registered business name with the Oregon Secretary of State's Corporation Division. The appraisal management company must use the registered business name for all transactions in this state.

Stat. Auth.: ORS 183.355, 674.305 & 674.310

Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250

Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0010

Registration Requirements

An appraisal management company applying for registration as an appraisal management company in Oregon shall submit to the Board all of the following:

(1) A completed application form listing the information required by ORS 674.205 as follows:

(a) The name, address, website address, phone and fax numbers of the appraisal management company. The name on the application form must match the name registered with the Oregon Secretary of State;

(b) The name, address, email and phone contact information of an individual that will be the initial point of contact for all communications with the Board;

(c) The name, address, email and phone contact information of controlling person(s) of the appraisal management company;

(d) The name, address, email and phone contact information of any subject individual that owns 10 percent or more of the appraisal management company;

(e) For all subject individuals, the license, certificate or registration numbers issued by any state to do business as an appraiser.

(f) For appraisal management companies, the license, certificate or registration numbers issued by any state to do business as an appraisal management company;

(g) If the appraisal management company is not domiciled in Oregon, the name and phone contact information for the entity's agent for service of process in this state;

(2) For subject individuals, a disclosure and documentation of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration to act as an appraiser;

(3) For the appraisal management company, a disclosure and documentation of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration to act as an appraisal management company;

(4) A signed certification on a form prescribed by the Board:

(a) That the appraisal management company complies with the minimum requirements in OAR 161-520-0020 regarding appraiser competency;

(b) That the appraisal management company maintains for at least five years:

(A) A record of each appraisal management services request the company receives and the appraiser who performs the real estate appraisal activity contained in the request;

(B) A copy of each written complaint received by the appraisal management company, along with proof of documentation showing the complaint was forwarded to the appraisal management company's client for the appraisal assignment.

(c) That the appraisal management company provides training to employees who select appraisers for an appraisal panel, select appraisers to perform real estate appraisal activity, or perform quality control examinations, and that the training complies with the requirements set forth in OAR 161-540-0010;

(d) That the appraisal management company requires each appraiser to provide the appraiser's certificate or license number issued by the Board and competency information required by OAR 161-520-0020;

(e) That the appraisal management company has written policies and procedures demonstrating compliance with ORS 674.220;

(f) That the appraisal management company has a system in place to require that appraisals are conducted independently and without inappropriate influence or coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act, including any implementing regulations; and

(g) That the appraisal management company requires appraisers completing appraisals at the company's request to comply with the Uniform Standards of Professional Appraisal Practice.

(h) That any employee of the appraisal management company that performs the act or process of developing and communicating a reviewer's own opinion of value as part of the appraisal review for a property located in this state, is an Oregon licensed/certified real estate appraiser

(5) Applicable fees as established in OAR 161, division 510;

(6) A copy of the surety bond required by ORS 674.210 in a form and format approved by the Board;

(7) A copy of the appraisal management company's business registration filed with the Oregon Secretary of State established in OAR 161-510-0005.

(8) A completed background check authorization form for all subject individuals.

ADMINISTRATIVE RULES

(9) Sealed envelopes containing fingerprint cards for all subject individuals, containing information specified in OAR 161-530-0020.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0020

Appraiser Competency

(1) A system to verify that each appraiser on the appraisal management company's appraiser panel, shall meet the following minimum requirements:

(a) An appraisal management company shall require that each independent contractor appraiser furnish their license or certificate number issued by the Board under ORS 674.310;

(b) An appraisal management company shall have a system in place to verify each independent contractor appraiser's license or certificate renewal;

(c) An appraisal management company shall prominently state in the engagement/assignment document to the independent contractor appraiser that, by the appraiser's acceptance and completion of the assignment, the appraiser agrees and attests that they are competent to perform the appraisal assignment;

(d) An appraisal management company shall include the following information in an assignment to an independent contractor appraiser, to the extent the appraisal management company's client has communicated the information to the appraisal management company:

(A) The geographic location of the real property, which may include the metropolitan statistical area, metropolitan division, area outside of a metropolitan statistical area, county, postal code, legal description or other geographic information identifying where the real property is situated; and

(B) The type of real property the assignment covers.

(e) An appraisal management company shall require that each independent contractor appraiser completing appraisals at the request of the appraisal management company comply with the Uniform Standards of Professional Appraisal Practice.

(2) The Board retains jurisdiction over administrative inquiries and actions involving misrepresentations made by an individual appraiser regarding competency.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0030

Renewal Or Reactivation Of Registration

(1) An appraisal management company renewing a registration as an appraisal management company shall submit to the Board all of the following information:

(a) A completed renewal application form listing the information required by ORS 674.205(2) as follows:

(A) The name, address, website address, phone and fax numbers of the appraisal management company;

(B) The name, address, email and phone contact information of an individual that will be the initial point of contact for all communications with the Board;

(C) The name, address, email and phone contact information of the controlling person(s) of the appraisal management company;

(D) The name, address, email and phone contact information of any subject individual that owns 10 percent or more of the appraisal management company;

(E) For all subject individuals, the license, certificate or registration numbers issued by any state to do business as an appraiser or an appraisal management company;

(F) If the appraisal management company is not domiciled in Oregon, the name, address and phone contact information for the entity's agent for service of process in this state;

(b) For subject individuals, a disclosure and documentation of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration to act as an appraiser;

(c) For appraisal management companies, a disclosure and documentation of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration to act as an appraisal management company;

(d) A signed certification on a form prescribed by the Board that the appraisal management company continues to:

(A) Maintain a system to verify the competency of appraisers on the appraisal management company's appraiser panel that meets the minimum requirements in OAR 161-520-0020;

(B) Maintain and have custody of the following records for a minimum of five years:

(i) Each appraisal management services request the appraisal management company receives and the appraiser who performs the real estate appraisal activity contained in the request;

(ii) A copy of each written complaint, along with documentation showing the complaint was forwarded to the client of the appraisal;

(iii) Documentation of the training provided to each employee who selects appraisers for an appraiser panel, selects appraisers to perform real estate appraisal activity, or performs quality control examinations, and that said training complies with the requirements set forth in OAR 161-540-0010;

(C) Require that each appraiser provide the appraiser's certificate or license number issued by the Board;

(D) Maintain written policies and procedures demonstrating compliance with ORS 674.220;

(E) Have a system in place to require that appraisals be conducted independently and without inappropriate influence or coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act, including any implementing regulations; and

(F) That the appraisal management company requires appraisers completing appraisals at the appraisal management company's request to comply with the Uniform Standards of Professional Appraisal Practice.

(G) That any employee of the appraisal management company that performs the act or process of developing and communicating a reviewer's own opinion of value as part of the appraisal review for a property located in this state, is an Oregon licensed/certified real estate appraiser.

(e) The certificate or registration numbers issued by any state to do business as an appraisal management company;

(f) Renewal fees established in OAR 161-510-0020; and

(g) A copy of the surety bond required by ORS 674.210.

(2) Renewal applications received after the expiration date and within one year of the date of expiration of the registration shall be assessed a late fee in addition to the renewal fee.

(3) An appraisal management company whose registration has expired shall cease operating as an appraisal management company in Oregon.

(4) If an appraisal management company does not submit a complete renewal application within one year from the date of expiration of the registration, the status of the registration becomes terminated and the appraisal management company must reapply pursuant to OAR 161-520-0010 and pay all applicable fees.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0040

Change Or Addition Of Subject Individual

An appraisal management company shall, within 30 business days, file with the Board, a notice of change or addition of a subject individual of the appraisal management company. Such notification shall be in writing on a form prescribed by the Board and include the following:

(1) A completed background check authorization form for any new subject individual containing information specified in OAR 161-530-0020;

(2) A sealed envelope containing a fingerprint card for each new subject individual; and

(3) Applicable fees established in OAR 161-510-0030.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0045

Change in Business Name

An appraisal management company shall, within thirty (30) calendar days, submit to the Board a notice of business name change. Such notification shall be in writing on a form prescribed by the Board along with the following:

(1) A corrected copy of the surety bond required by ORS 674.210;

(2) A copy of the Secretary of State business registration with the company's new name; and

(3) Applicable fees as established in OAR 161-510-0030.

Stat. Auth.: ORS 183.355, 674.305 & 674.310

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Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0050

Change of Individual Ownership

An appraisal management company with a change of individual ownership greater than fifty (50) percent interest in the appraisal management company, shall submit to the Board a notice of change of ownership. Such notification shall be in writing on a form prescribed by the Board, along with the following:

- (1) A copy of the surety bond required by ORS 674.210;
- (2) A copy of the Secretary of State business registration showing change of registered agent;
- (3) A completed background check authorization form for the new subject individual, containing information specified in OAR 161-530-0020;
- (4) A sealed envelope containing a fingerprint card for the subject individual;
- (5) The application fee established in OAR 161-510-0010; and
- (6) The fingerprint and background check fee established in OAR 161-510-0030.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0055

Change of Address

(1) An appraisal management company must maintain on file with the Board a current physical and mailing address, and notify the Board within thirty (30) calendar days of any change in either the physical or mailing address.

(2) A forwarding address is effective as a current mailing address when the Board receives notice of the forwarding address by the United States Postal Service.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-520-0060

Termination or Cancellation of Surety Bond or Letter of Credit

(1) If the surety bond or letter of credit maintained by an appraisal management company is terminated or cancelled, the appraisal management company shall file a replacement surety bond or letter of credit as soon as practicable or within five days of the cancellation or termination, whichever occurs sooner.

(2) An appraisal management company that does not file a replacement surety bond or letter of credit under paragraph (1) of this rule shall surrender the appraisal management company's registration and cease operating as an appraisal management company.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-530-0010

Criminal Records Check

(1) The Board shall conduct a criminal records check on a subject individual as a condition of issuing a registration as an appraisal management company, or when there is a change or addition of a subject individual of an appraisal management company.

(2) The subject individual shall submit a completed criminal background authorization on a form prescribed by the Board, along with a fingerprint card.

(3) The subject individual shall provide additional information, as requested by the Board, to resolve any issue hindering the completion of a criminal background check and/or fitness determination.

(4) The Board shall request that the Oregon State Police conduct Oregon and nationwide criminal records checks through fingerprint identification. The Board may request or conduct a Law Enforcement Data System (LEDS) criminal records check, as part of any criminal background check and/or fitness determination, to meet the requirements of this rule.

(5) If a subject individual refuses to consent to a criminal records check, including fingerprint identification, the Board shall not issue a registration as an appraisal management company. A subject individual may not contest any determination made based on a refusal to consent.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447
Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-530-0020

Background Check Authorizations and Fingerprint Card

(1) The background check includes a criminal background check and a criminal records request as provided in OAR Chapter 161, Division 520. The subject individual must apply for the background check in writing on a form approved by the Board with all information provided and certified by the subject individual.

(2) Each subject individual must submit one completed fingerprint card, prescribed by the Federal Bureau of Investigation and completed by a law enforcement agency or a commercial fingerprinting entity, and an additional fee sufficient to cover the costs of processing the subject individual's fingerprint information.

(3) The background check shall include, but is not limited to, the following:

- (a) Legal name, residence physical and mailing address, telephone numbers and email address;
- (b) Place and date of birth;
- (c) Social security number;
- (d) Driver's license or identification card number and state of issue;
- (e) Whether the subject individual has:

(A) EVER entered a plea of nolo contendere, plead or been found guilty of or convicted of a felony;

(B) In the past ten years entered a plea of nolo contendere, plead or been found guilty of, or convicted of, a misdemeanor;

(C) EVER been reprimanded or fined or had a license, certificate or registration suspended, revoked, restricted, denied or surrendered in this or any other state by any agency that has granted a license, certificate or registration to engage in a regulated occupation, trade or profession;

(D) An entry of any money judgments that have not been paid in full;

(E) Filed for voluntary or involuntary bankruptcy protection during the past ten years; and

(F) Any other information the Board considers necessary to evaluate the moral character of the subject individual.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-530-0030

Potentially Disqualifying Crimes; Process

(1) A "potentially disqualifying crime" means a crime that:

(a) Reflects moral turpitude, or an act or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation; and

(b) Is rationally connected to the business entity's fitness to act as a controlling person or own 10 percent or more of an appraisal management company.

(2) The Board shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(3) A subject individual shall not be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged under ORS 419A.260 and 419A.262.

(4) If a subject individual is denied as not fit, the appraisal management company may not obtain an Oregon registration unless the subject individual divests all or part of the individual's ownership interest in the appraisal management company or the appraisal management company designates another controlling person, whichever is applicable.

(5) The Board shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via courier, or registered or certified mail to the most current address provided by the subject individual of the disqualification. Responsibility for furnishing the most current address remains with the subject individual.

(6) A final fitness determination is a final order of the Board unless the affected subject individual requests a contested case hearing under ORS Chapter 183. A subject individual may contest a fitness determination made under these rules that she or he is fit or not fit to act as a controlling person or own 10 percent or more of an appraisal management company under ORS Chapter 183.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

ADMINISTRATIVE RULES

161-530-0040

Reporting Litigation Involving Subject Individuals

(1) A subject individual is required to notify the Board of any of the following:

(a) Any felony or misdemeanor conviction, including a no contest plea or bail forfeiture;

(b) Any adverse decision or judgment resulting from any civil or criminal suit or action or arbitration proceeding, or any administrative, state or federal proceeding in which the appraisal management company, or any subject individual thereof, was named as a party and against whom allegations concerning any business conduct or professional real estate appraisal activity is asserted; and

(c) Any adverse decision or judgment resulting from any other criminal or civil proceedings that reflects adversely on the "good moral character" requirement contained in ORS 674.205(3) and OAR 161-530-0030(1).

(2) Notification must be in writing and shall include a brief description of the circumstances involved, the names of the parties, and a copy of the adverse decision, judgment, or award and, in the case of a criminal conviction, a copy of the sentencing order. If any judgment, award, or decision is appealed, each subsequent appellate court decision is subject to this notification requirement.

(3) Notification must be made within thirty (30) calendar days after receipt of any written notification of an adverse judgment, award, or decision described in this rule, whether or not an appeal is filed.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-540-0010

Training

(1) Appraisal management companies must provide specified training to employees who:

- (a) Select appraisers for an appraiser panel;
- (b) Select appraisers to perform real estate appraisal activity; or
- (c) Perform quality control examinations.

(2) The specified training must include, but is not limited to the following topics:

- (a) ORS 674.220, 674.225, 674.230, and 674.240; and
- (b) The Uniform Standards of Professional Appraisal Practice (USPAP). This topic may be broad in scope, but must at a minimum include the following elements:

- (A) Preamble;
- (B) Definitions;
- (C) Ethics Rule;
- (D) Record Keeping Rule;
- (E) Competency Rule;
- (F) Scope of Work Rule;
- (G) Standard 1;
- (H) Standard 2;
- (I) Standard 3;
- (J) Advisory Opinion 3, Update of a Prior Appraisal;
- (K) Advisory Opinion 21, USPAP Compliance;
- (L) Advisory Opinion 26, Readdressing (Transferring) a Report to Another Party; and

(M) Advisory Opinion 27, Appraising the Same Property for a New Client.

(3) Appraisal management companies shall provide the specified training to all employees specified in paragraph (1) above:

(a) By December 31, 2012 for all appraisal management companies registered with the State of Oregon prior to July 1, 2012;

(b) Within six months for all appraisal management companies registering with the State of Oregon after July 1, 2012;

(c) For any new employees within six months from the hire date with the appraisal management company.

(4) Appraisal management companies must maintain the training records for each employee and training material, as specified in paragraphs (1) and (2) above, not less than five years after the date of completion of the training. Employee training records must include:

- (a) The name of the employee;
- (b) Topics covered;
- (c) Date of completion; and
- (d) Method of delivery of training.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-550-0010

Annual Reports

(1) An appraisal management company shall annually submit to the Board on March 31 a report disclosing the following information on a form prescribed by the Board:

(a) The number of independent contractor appraisals in the preceding year for which the appraisal management company performed appraisal management services in Oregon;

(b) For subject individuals, any action taken by a state to refuse to issue, deny, cancel or revoke a license, certificate or registration to act as an appraiser;

(c) For appraisal management companies, any action taken by a state to refuse to issue, deny, cancel or revoke a license, certificate or registration to act as an appraisal management company.

(2) A late fee, as established in OAR 161-510-0010, will be charged for any annual report received by the Board after March 31.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-550-0020

Records and Real Estate Appraisal Activity Report Retention Requirements

(1) An appraisal management company shall maintain a detailed record of each service request that it receives, the appraiser that perform the real estate appraisal activity and a complete copy of all completed reports for each assignment. Records shall be maintained by the appraisal management company for:

(a) Not less than five years after the date of completion of the report to which the record pertains; or

(b) For a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records are given, whichever period is longer.

(2) An appraisal management company shall maintain the following for a period of not less than five years:

(a) Documentation of each written complaint received by the appraisal management company, along with the name of the client that requested the appraisal, and the date the complaint was forwarded to the client.

(b) A copy of the written notification to the person who submitted the complaint that the complaint was forwarded to the client.

(c) Training materials and training records for each employee specified in OAR 161-540-0010 and ORS 674.245.

Stat. Auth.: ORS 183.355, 674.305 & 674.310

Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250

Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-560-0010

Audits Required

(1) An audit of an appraisal management company registered to provide appraisal management services in Oregon may be conducted by the Board.

(2) In the case of a subsidiary or affiliate of a financial institution engaging in business as an appraisal management company without obtaining a registration to provide appraisal management services in Oregon, the Board may conduct an audit of the appraisal management company in a joint or alternating manner with the appropriate federal banking agency or the Bureau of Consumer Financial Protection as permitted or required by applicable law.

(3) The Board may audit an appraisal management company at any time or times and may require the production of such records at the office of the Board as often as is necessary.

(4) An appraisal management company that refuses to submit to an audit shall be considered to have failed the audit.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447

Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447

Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-560-0020

Audit Standards

An audit under OAR 161-560-0010 will examine the appraisal management company's compliance with ORS 674.200 to 674.250, including, but not limited to, examination of the following:

(1) The appraisal management company's compliance with the minimum requirements in OAR 161-520-0020 regarding appraiser competency.

ADMINISTRATIVE RULES

(2) The names, license or certification numbers, and competency information required by OAR 161-520-0020 of the Oregon licensed or certified appraisers on the appraisal management company's appraiser panel.

(3) Training materials used by the appraisal management company to satisfy OAR 161-540-0010.

(4) Records of employees who received training as required by OAR 161-540-0010.

(5) The appraisal management company's record retention schedule, consistent with ORS 674.150 and OAR 161-550-0020.

(6) The appraisal management company's business practices and transactions that may indicate:

(a) The appraisal management company attempted to influence the development, reporting or review of an appraisal or appraisal review assignment, consistent with the prohibitions established in ORS 674.220.

(b) The appraisal management company substantively altered in any way a completed appraisal report submitted by an appraiser, consistent with the prohibition established in ORS 674.220.

(c) The appraisal management company failed to make payments to an independent contractor appraiser for the completion of an appraisal or appraisal review, excluding claims for breach of contract or substandard performance, as established in ORS 674.225.

(d) The appraisal management company violated any other provision established in ORS 674.200 to 674.250 or OAR chapter 161.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447
Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447
Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-570-0010

Duty to Cooperate

Every subject individual and employee of an appraisal management company must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of a registration, imposition of a civil penalty, or denial of a registration, or any combination thereof.

Stat. Auth.: ORS 183.355, ORS 674.305(7), ORS 674.310 & 2011 OL Ch. 447
Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447
Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-570-0015

Appraisal Review

Any employee or independent contractor appraiser of an appraisal management company that performs the act or process of developing and communicating a reviewer's own opinion of value as part of an appraisal review for a property located in this state:

(1) Must be licensed or certified in this state pursuant to ORS 674.100; and

(2) Must comply with the appraisal review provisions of the Uniform Standards of Professional Appraisal Practice.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-570-0020

Forwarding Complaints

An appraisal management company that receives a written complaint from a person with an interest in a real estate transaction shall:

(1) Forward the complaint to the client; and

(2) Give written notification to the person who submitted the complaint that the complaint was forwarded to the client.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-570-0030

Appraisal Management Company Complaints

(1) A complaint may be filed with the Board against an appraisal management company or subject individual. All complaints must be in writing and submitted to the Board's office. The complaint will be reviewed by the Board to determine if the allegations presented in the complaint are within the Board's jurisdiction.

(2) A member of the Board or the Administrator may also initiate a complaint or request an investigation.

Stat. Auth.: ORS 183.355, 674.305 & 674.310

Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-570-0045

Appraisal Management Company Investigations and Audits

(1) A Notice of Complaint, together with a true copy of the complaint as submitted to the Board, including all supporting documentation, shall be promptly sent via certified mail, return receipt requested, to the last known address of each controlling person of the appraisal management company. A controlling person must produce:

(a) True copies of records as specified in the Notice of Complaint within a specific time period to which no extension will be granted; and

(b) A written response to the allegations set forth in the complaint within a specific time period. The controlling person may request an extension to file a response. An extension of up to thirty (30) days will be approved provided the extension request is submitted to the Board in writing on or before the response due date.

(2) A member of the Board or the Administrator may initiate an audit or other type of inquiry or investigation to verify an appraisal management company's compliance with ORS Chapter 674 and OAR chapter 161.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

161-570-0050

Separate Offense and Violation

(1) Each act of appraisal management services by an appraisal management company not registered by the State is a separate violation of ORS 674.205.

(2) Any and each violation of ORS 674.200 to 674.250, or any rule or final order of the Board, or any final judgment or decree made by any court upon application of the Board, may be deemed a separate offense for which a separate penalty may be imposed.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245 & 674.250
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Correct mis-filed text to OAR 820-010-0622.

Adm. Order No.: BEELS 3-2012

Filed with Sec. of State: 7-13-2012

Certified to be Effective: 7-13-12

Notice Publication Date: 4-1-2012

Rules Amended: 820-010-0622

Subject: OAR 820-010-0622 was filed with a package of rules adopted by the Board on May 8, 2012. When the amendment to OAR 820-010-0622 was filed on May 10, 2012, language was inadvertently missing text. The revised language to OAR 820-010-0622 separates the circumstances in which a PE may modify designs or documents.

Rules Coordinator: Mari Lopez—(503) 362-2666, ext. 26

820-010-0622

Modifying Designs or Documents

(1) Documents prepared and sealed by a Professional Engineer may be modified only when all of the following requirements are met:

(a) Only a Professional Engineer can modify designs or documents prepared and sealed by another Professional Engineer.

(b) A Professional Engineer will only modify another Professional Engineer's design or document if they are competent by education or experience.

(c) The Professional Engineer modifying another Professional Engineer's design or document will cloud, encircle, or in some other way clearly indicate the portion of the design or document they are revising and refer the viewer to a separate design or document.

(d) The Professional Engineer making the design revisions will seal and sign the separate design or document.

(e) A Professional Engineer modifying designs or documents not sealed must provide all the engineering services that would have been required had they started the work from its origin.

(2) Professional Engineers modifying designs or documents prepared by an unlicensed person for an exempt structure must do the following:

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(a) The Professional Engineer modifying the design or document will cloud, encircle, or in some other way clearly indicate the portion of the design or document they are revising and refer the viewer to a separate design or document.

(b) The Professional Engineer making the design revision will seal and sign the separate design or document.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 3-2012, f. & cert. ef. 7-13-12

Board of Massage Therapists Chapter 334

Rule Caption: Create Breast & Internal Cavity rules, amend and clarify rule language.

Adm. Order No.: BMT 1-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 5-1-2012

Rules Adopted: 334-010-0028, 334-010-0029

Rules Amended: 334-010-0009, 334-010-0015, 334-010-0018, 334-010-0033

Subject: The OBMT has amended verbiage to comply with current standards.

The OBMT is amending the fee rule to include a prorated amount for initial renewals under 12 months.

The OBMT is adopting two new rules; Breast & Internal Cavity Massage; for public protection with regards to these specific modalities.

Rules Coordinator: Christine West—(503) 365-8657

334-010-0009

Credentialing Review

(1) The Board may grant a license to applicants who are or have legally practiced massage and/or bodywork after successful completion of the practical and jurisprudence examinations, the written examination and upon a credentialing review.

(a) Credentialing review must be submitted on the approved Board of Massage forms (Credentialing Review), submitted with official transcripts and/or certificates as proof of completion.

(A)(i) Of the 200 Anatomy & Physiology, Pathology and Kinesiology hours required, 120 hours minimum must be from certified class instruction. Of the 200 hours required, up to 80 contact hours of prior continuing education in subject areas may apply.

(ii) Official Transcripts or Certificates of Completion must be documented on the approved Board of Massage form: Credentialing Review.

(B)(i) Of the 300 Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation hours required, 140 hours minimum must be from certified class instruction. Of the 300 hours required up to 120 contact hours of prior continuing education in subject areas may apply. Of the 300 hours required, up to 40 hours of practical work experience may apply.

(ii) Practical Work Experience must be documented on the approved Board of Massage forms: Credentialing Review and Work Experience Verification Worksheet.

(2) Credentialing Review applications must be accompanied by:

(a) Current Credentialing Review fee and

(b) Any additional documentation required by the Board.

Stat. Auth.: ORS 687

Stats. Implemented: ORS 687.031

Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12

334-010-0015

Licensure

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

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

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

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

(c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than

minor traffic infractions in any state or jurisdiction of the United States or foreign country;

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

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

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

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

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

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

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

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

(a) Current licensing fee;

(b) Any applicable late fees;

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

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

(e) Any additional documentation required by the Board.

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

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

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

(10) An application to reactivate an inactive license:

(a) must be accompanied by:

(A) Current licensing fee;

(B) Verification of current cardiopulmonary resuscitation (CPR);

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

(D) Completed fingerprint card for criminal background check.

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

Stat. Auth.: ORS 687.121 & 687.051

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12

334-010-0018

Criminal Background Checks, Fitness Determinations

(1) The Board requires a criminal background check of all applicants for a massage therapist license to determine the professional fitness of an applicant. These must be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board must submit fingerprints to the Oregon Department of State Police for checks against state law enforcement data systems and national data sources. Any original fingerprint cards and any electronic fingerprint records must subsequently be destroyed by the Oregon Department of State Police.

(a) The Board requires completed fingerprint cards of all applicants for an initial license; licensees applying to reinstate a lapsed license or licensees applying to reactivate an inactive license; and licensees under

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investigation to determine the professional fitness of an applicant or licensee.

(2) These rules are to be applied when evaluating the criminal background of all licensees and applicants for a massage therapist license and conducting professional fitness determinations based upon such history. The fact that the applicant has cleared the criminal background check does not guarantee the granting of a license.

(3) The Board may require fingerprints of any Oregon licensed massage therapist who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal background check.

(4) All criminal background checks must include, but not be limited to, all available state law enforcement data systems and national data sources, unless obtaining one or the other is an acceptable alternative.

(5) Additional information required. In order to conduct the Oregon and National Criminal Background Check and professional fitness determination, the Board may require additional information from the licensee/applicant as necessary, including but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

(7) The Board must determine whether an individual is professionally fit to be granted a license. If an individual is determined to be unfit, then the individual may not be granted a license. The Board may make professional fitness determinations conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure. Except as otherwise provided in section (1), in making the professional fitness determination the Board must consider:

- (a) Criminal background check;
- (b) The nature of the crime;
- (c) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
- (d) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
- (e) Any refusal to submit or consent to a criminal background check including, but not limited to, fingerprint identification;
- (f) Any other pertinent information requested or obtained as a part of an investigation;
- (g) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (8) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.

(9) If an applicant or licensee is determined not to be professionally fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy of completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(a) If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board must conduct a new criminal background check upon submission of a new request.

(10) If the applicant discontinues the application process or fails to cooperate with the criminal background check process, the application is considered incomplete.

Stat. Auth.: ORS 687 & 676
Stats. Implemented: ORS 181, 183, 687.041, 687.051, 687.081, 670.280
Hist.: BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12

334-010-0028

Breast Massage

(1) Prior to performing breast massage to treat certain medical conditions, a LMT must:

(a) Be able to present evidence of the completion of specialized contact hours as training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to breast massage;

(b) Be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s).

(c) Acquire prior written and verbal consent before proceeding; the written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.

(2) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the breast area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the breast area must be covered again.

(3) Additional prior written consent and the actual presence of a parent or legal guardian is required when treating individuals under 18 years of age.

Stat. Auth.: ORS 687
Stats. Implemented: ORS 687.121
Hist.: BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12

334-010-0029

Internal Cavity Massage

(1) An internal cavity massage must be performed using gloves and utilizing universal precautions for communicable disease control.

(2) Prior to performing internal cavity massage to treat certain medical conditions, a LMT must:

(a) Be able to present evidence of the completion of specialized contact hours as training beyond the minimum competencies, which includes but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client safety, client consent, client communication, draping techniques, sanitation, and ethical responsibilities related to internal cavity massage;

(b) Be able to articulate a therapeutic rationale which is acknowledged by the client; rationale may include a medical prescription and/or permission to consult with the clients health care provider(s).

(c) Acquire prior written and verbal consent before proceeding; written consent must include clients' option to accept or decline to provide a witness, in addition to the client and LMT.

(3) While performing these procedures a LMT must use appropriate draping techniques at all times. Any temporary exposure of the genital area for the purposes of treatment is acceptable only in respect to appropriate procedures for that treatment. Immediately following treatment of the area, the genital area must be covered again.

(4) Under no circumstances will intravaginal or intra-anal techniques be performed on individuals under 18 years of age.

Stat. Auth.: ORS 687
Stats. Implemented: ORS 687.121
Hist.: BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12

334-010-0033

Fees

(1) The fees are:

- (a) \$100 per biennial renewal for initial license;
- (b) \$50 per biennial renewal for initial license under 12 months;
- (c) \$150 per biennial renewal for active license;
- (d) \$50 per biennial renewal for inactive license;
- (e) \$25 per week, up to a maximum of \$250, for any late renewal;
- (f) \$50 for exam/endorsement application processing;
- (g) \$150 for each practical examination;
- (h) \$100 for mailing list;
- (i) \$10 for license reprint;
- (j) \$10 for license verification;
- (k) \$250 Credentialing Review;
- (l) Current Oregon State Police Criminal Background Check Fee; and
- (m) Other administrative fees as allowed by law.

(2) Application and licensure fees are not refundable

(3) Examination fees are refunded only when requested in writing and either:

- (a) The applicant is unqualified by Oregon statutes, or

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(b) Applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2012, f. 6-19-12, cert. ef. 7-1-12

Board of Nursing Chapter 851

Rule Caption: Delinquent renewal fees for RN/LPN and AP applications increase from \$12.00 to \$100.00.

Adm. Order No.: BN 10-2012

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 8-1-12

Notice Publication Date: 6-1-2012

Rules Amended: 851-002-0010, 851-002-0020, 851-002-0030, 851-002-0035

Subject: The proposed rule changes will streamline the processing of late renewals and reduce OSBN operational and licensee costs of administering civil penalties for those practicing as a nurse without an active license for less than 60 days delinquent. Rather than pursue a civil penalty of \$50/day for up to 60 days for working without a license, the delinquent renewal fee for RN/LPN and Advanced Practice applications would increase in all cases from \$12.00 to \$100.00. The OSBN will pursue civil penalties for practicing as a nurse without a license, where a renewal or reactivation application is more than 60 days late or deemed necessary by Board order, at \$50/day up to \$5,000 maximum.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-002-0010

RN/LPN Schedule of Fees

- (1) License Renewal – \$145.
- (2) Delinquent fee – \$100.
- (3) Workforce Data Analysis Fund at Renewal – \$5.
- (4) License by Endorsement – \$195.
- (5) Licensure by Examination – \$160.
- (6) Written Verification of License – \$12.
- (7) Limited Licenses:
 - (a) License Memorandum – \$25.
 - (b) Reentry – \$95.
 - (c) Extension of Reentry – \$25.
- (8) Limited Licenses for Educational Experience:
 - (a) International Graduate Nursing Students – \$65.
 - (b) Extension of International Graduate Nursing Students – \$25.
 - (c) International RN in Short-Term Educational Experience – \$35.
 - (d) International Exchange Students – \$25.
 - (e) U.S. RNs in Distance Learning – \$15.
 - (f) Extension of Distance Learning – \$15.
 - (g) Reexamination for Licensure – \$25.
 - (h) Reactivation – \$160.
- (11) Reinstatement by Reactivation – \$160.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 17-2002, f. & cert. ef. 10-18-02; BN 6-2003, f. & cert. ef. 7-7-03; BN 5-2007, f. 5-4-07, cert. ef. 7-1-07; BN 5-2009, f. & cert. ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10; BN 7-2010, f. & cert. ef. 6-25-10; BN 16-2010, f. & cert. ef. 11-29-10; BN 10-2012, f. 7-6-12, cert. ef. 8-1-12

851-002-0020

Nurse Practitioner Schedule of Fees

- (1) Initial Nurse Practitioner Certification – \$150.
- (2) First Category Renewal (combined with Prescriptive Privilege renewal) – \$105.
- (3) Prescription Monitoring Fund (Biennial) – \$50.
- (4) Additional Category Renewal – \$50.
- (5) Delinquent fee – \$100.
- (6) Nurse Practitioner Prescriptive Authority Initial Application – \$75.
- (7) Limited License for Reentry or Clinical Practicum – \$95.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 16-2006, f. & cert. ef. 11-29-06; BN 7-2009, f. 12-17-09, cert. ef. 1-1-10; BN 10-2012, f. 7-6-12, cert. ef. 8-1-12

851-002-0030

Certified Registered Nurse Anesthetist Schedule of Fees

- (1) Initial Certified Registered Nurse Anesthetist License – \$150.
- (2) Renewal of CRNA License – \$55.
- (3) Delinquent fee of CRNA License – \$100.
- (4) Combined Limited and Initial License – \$175.
- (5) Reentry Limited License – \$95.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 10-2012, f. 7-6-12, cert. ef. 8-1-12

851-002-0035

Clinical Nurse Specialist Schedule of Fees

- (1) Initial Clinical Nurse Specialist Certification – \$150.
- (2) Renewal of Certification without Prescriptive Authority – \$75.
- (3) Prescription Monitoring Fund (Biennial) – \$50.
- (4) Renewal of Certification with Prescriptive Authority – \$105.
- (5) Clinical Nurse Specialist Prescriptive Authority Initial Application – \$75.
- (6) Delinquent fee – \$100.
- (7) Limited License for Reentry or Clinical Practicum – \$95.
- (8) Extension of Limited License – \$95.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 16-2006, f. & cert. ef. 11-29-06; BN 7-2009, f. 12-17-09, cert. ef. 1-1-10; BN 10-2012, f. 7-6-12, cert. ef. 8-1-12

Rule Caption: To bring the language in line with previous versions and the intent of the Board.

Adm. Order No.: BN 11-2012

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 8-1-12

Notice Publication Date: 6-1-2012

Rules Amended: 851-045-0100

Subject: The purpose of the revision to 851-045-0100(2)(d) is to bring the language in line with previous versions of the rule and the intent of the Board.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

ADMINISTRATIVE RULES

851-045-0100

Imposition of Civil Penalties

(1) Imposition of a civil penalty does not preclude disciplinary sanction against the nurse's license. Disciplinary sanction against the nurse's license does not preclude imposing a civil penalty. Criminal conviction does not preclude imposition of a civil penalty for the same offense.

(2) Civil penalties may be imposed according to the following schedule:

(a) Practicing nursing as a Licensed Practical Nurse (LPN), Registered Nurse (RN), Nurse Practitioner (NP), Certified Registered Nurse Anesthetist (CRNA) or Clinical Nurse Specialist (CNS) without a current license or certificate or Board required concurrent national certification; or prescribing, dispensing, or distributing drugs without current prescription writing authority, due to failure to renew and continuing to practice \$50 per day, up to \$5,000.

(b) Using a limited license to practice nursing for other than its intended purpose \$100 per day.

(c) Nurses not licensed in Oregon hired to meet a temporary staffing shortage who fail to make application for an Oregon license by the day placed on staff \$100 per day up to \$3,000.

(d) Practicing nursing prior to obtaining an Oregon license by examination or endorsement \$100 per day.

(e) Nurse imposter up to \$5,000. "Nurse Imposter" means an individual who has not attended or completed a nursing education program or who is ineligible for nursing licensure or certification as a LPN, RN, NP, CRNA or CNS and who practices or offers to practice nursing or uses any title, abbreviation, card or device to indicate that the individual is so licensed or certified to practice nursing in Oregon; and

(f) Conduct derogatory to the standards of nursing \$1,000–\$5,000. The following factors will be considered in determining the dollar amount, to include, but not be limited to:

(A) Intent;

(B) Damage and/or injury to the client;

(C) History of performance in current and former employment settings;

(D) Potential danger to the public health, safety and welfare;

(E) Prior offenses or violations including prior complaints filed with the Board and past disciplinary actions taken by the Board;

(F) Severity of the incident;

(G) Duration of the incident; and

(H) Economic impact on the person.

(g) Violation of any disciplinary sanction imposed by the Board of Nursing \$1,000–\$5,000.

(h) Conviction of a crime which relates adversely to the practice of nursing or the ability to safely practice \$1,000–\$5,000.

(i) Gross incompetence in the practice of nursing \$2,500–\$5,000.

(j) Gross negligence in the practice of nursing \$2,500–\$5,000.

(k) Employing any person without a current Oregon LPN, RN or CRNA license, NP or CNS certificate to function as a LPN, RN, CRNA, NP or CNS subject to the following conditions:

(A) Knowingly hiring an individual in a position of a licensed nurse when the individual does not have a current, valid Oregon license or certificate \$5,000; or

(B) Allowing an individual to continue practicing as a LPN, RN, NP, CRNA or CNS knowing that the individual does not have a current, valid Oregon license or certificate \$5,000.

(l) Employing a LPN, RN, NP, CRNA or CNS without a procedure in place for checking the current status of that nurse's license or certificate to ensure that only those nurses with a current, valid Oregon license or certificate be allowed to practice nursing \$5,000;

(m) Supplying false information regarding conviction of a crime, discipline in another state, physical or mental illness/physical handicap, or meeting the practice requirement on an application for initial licensure or re-licensure, or certification or recertification \$5,000; and

(n) Precepting a nursing student at any level without verifying their appropriate licensure, registration, or certification — \$5,000.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.117

Hist.: BN 4-2008, f. & cert. ef. 6-24-08; BN 2-2012(Temp), f. & cert. ef. 4-26-12 thru 10-1-12; BN 5-2012, f. 5-7-12, cert. ef. 6-1-12; BN 9-2012, f. & cert. ef. 6-5-12; BN 11-2012, f. 7-6-12, cert. ef. 8-1-12

Rule Caption: To bring the language in line with previous versions and the intent of the Board.

Adm. Order No.: BN 12-2012

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 8-1-12

Notice Publication Date: 6-1-2012

Rules Repealed: 851-050-0150

Subject: The purpose of the revision to Division 50 is to bring the language in line with previous versions of the rule and the intent of the Board.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

Rule Caption: To clarify language regarding the requirements of the Health Professionals' Services Program.

Adm. Order No.: BN 13-2012

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 8-1-12

Notice Publication Date: 6-1-2012

Rules Amended: 851-070-0090

Subject: The purpose of the revisions to Division 70 is to:

- Clarify that the program is for four years for a substance use disorder and/or substance use and mental health disorder (co-occurring); and

- Clarify that the program is for two years for a mental health disorder; and

- Clarify that monitored practice is to be supervised in the work setting.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-070-0090

Completion Requirements

(1) To successfully complete the Health Professionals' Services Program (HPSP), licensees with a substance use disorder, or with a mental health disorder and a substance use disorder, must have participated in the HPSP program for a minimum of four years and have worked for at least two years in a supervised monitored practice. Licensees must complete the required two years of supervised monitored practice within four years of entering the Health Professionals' Services Program.

(2) To successfully complete the Health Professionals' Services Program, licensees with a mental health disorder, but no substance use disorder, must have participated in the HPSP program for a minimum of two years and have worked for at least one year in a supervised monitored practice. Licensees must complete the required year of supervised monitored practice within two years of entering the Health Professionals' Services Program.

(3) The Board may extend by one year the time within which a licensee must complete the supervised monitored practice if the licensee has remained compliant with the program.

(4) A licensee who does not complete the required term of supervised monitored practice will be discharged from the Health Professionals' Services Program and may be subject to discipline.

(5) The time spent working in a supervised monitored practice before transferring from the Nurse Monitoring Program to the Health Professionals' Services Program effective July 1, 2010, will be counted toward the required term of supervised monitored practice.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; BN 19-2010, f. & cert. ef. 12-2-10; BN 4-2012(Temp), f. & cert. ef. 4-26-12 thru 10-1-12; BN 13-2012, f. 7-6-12, cert. ef. 8-1-12

ADMINISTRATIVE RULES

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amends the rules to include the notice of rights.

Adm. Order No.: PAR 2-2012(Temp)

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 6-28-12 thru 12-25-12

Notice Publication Date:

Rules Amended: 255-030-0013, 255-032-0022, 255-075-0025

Subject: This rulemaking formally adopts the notice-of-rights forms for general Board hearings, murder reviews (aggravated murder) hearings, and sanction hearings.

Rules Coordinator: Shawna Harnden—(503) 945-0913

255-030-0013

Notification of Hearing

(1) The Board shall send written notice of the hearing and its purpose to the inmate. The inmate shall receive a copy of the Board Review Packet, including the notice of rights (Exhibit NOR-1), at least 14 days prior to the hearing.

(2) If the inmate did not receive 14 days notice, the Board may reschedule the hearing or the inmate may waive the notice and the Board shall conduct the hearing.

(3) The Board shall attempt to notify the victim, if the victim requests notification and furnishes the Board a current address, and the District Attorney of the committing county at least ninety (90) days before all hearings by sending written notice to the current addresses of both parties.

Stat. Auth.: ORS 144.120(7) & 144.130

Stats. Implemented: ORS 144.120(7) & 144.130

Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1990(Temp), f. & cert. ef. 2-20-90; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 7-2010, f. & cert. ef. 9-3-10; PAR 8-2010, f. & cert. ef. 9-29-10; PAR 2-2012(Temp), f. & cert. ef. 6-28-12 thru 12-25-12

255-032-0022

Murder Review Hearings Notice

The Board's notice (Exhibit NOR-3MR) must include:

(1) A statement that the sole issue to be considered shall be whether or not the inmate is likely to be rehabilitated within a reasonable period of time, and that the inmate shall have the burden of proof, by a preponderance of the evidence;

(2) A statement of the inmate's right to be represented by counsel; and if the inmate is without sufficient funds, counsel will be appointed by the Board at Board expense;

(3) A statement that the Board has authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5); and

(4) A statement of rights of the inmate at the hearing.

Stat. Auth.: ORS 183.415, 163.105(2), 163.115(5)

Stats. Implemented:

Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07; PAR 2-2012(Temp), f. & cert. ef. 6-28-12 thru 12-25-12

255-075-0025

Rights at Hearing

(1) The designee of the Sanction Authority (eg. Hearings Officer) shall provide the offender a written notice of the hearing at least three (3) working days prior to the hearing.

(2) The hearing notice shall include:

(a) A Notice of Rights as provided in ORS 144.343(3) (Exhibit NOR-2);

(b) A written statement of alleged violations;

(c) Any documents or evidence which form the basis of the alleged violations; and

(d) The date and location of the hearing.

(3) The offender may elect to waive the three working day notification period prior to the hearing and begin the hearing immediately.

(4) If the offender elects to waive the three working day notification period, the Hearings Officer shall obtain a written waiver or tape record of the offender's verbal statement waiving the three working day notification period.

(5) The Hearings Officer shall ascertain whether the offender has understood the allegations and the offender's rights and whether the offender can read, hear and understand the language of the proceedings. The

Hearings Officer shall postpone the hearing if needed assistance is not readily available.

Stat. Auth.: ORS 144.343(3)

Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 525 OL 1997 (Enrolled SB 156)

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 1-1984(Temp), f. & ef. 11-19-84; 2PB 1-1985, f. & ef. 2-28-85; PAR 1-1988(Temp), f. 3-11-88, ef. 3-14-88; PAR 6-1988, f. & ef. 5-19-88; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98; PAR 2-2012(Temp), f. & cert. ef. 6-28-12 thru 12-25-12

Board of Pharmacy Chapter 855

Rule Caption: Amend or adopt new Definitions, Practitioner Dispensing Outlet and Controlled Substances rules.

Adm. Order No.: BP 3-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12

Notice Publication Date: 5-1-2012

Rules Adopted: 855-043-0405, 855-043-0410, 855-043-0415, 855-043-0420, 855-043-0425, 855-043-0430, 855-043-0435, 855-043-0440, 855-043-0445, 855-043-0450, 855-043-0455

Rules Amended: 855-006-0005, 855-043-0002, 855-080-0100

Subject: Division 006 rules are amended to define "Board" and add "dispense" to existing definitions. Division 043 Practitioner Dispensing Outlet rules implement 2012 Oregon Laws Chapter 34. These rules define "Supervising Physician Dispensing Outlet" and identify which entities must register as well as their requirements. Division 80 Animal Euthanasia rules are amended to correct an outdated fee reference.

The complete text of these rules are available on the Board's website at www.pharmacy.state.or.us

Rules Coordinator: Karen MacLean—(971) 673-0001

855-006-0005

Definitions

As used in OAR chapter 855:

(1) "Board" means the Oregon Board of Pharmacy unless otherwise specified or required by the context.

(2) "Certified Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board and has completed the specialized education program pursuant to OAR 855-025-0005. Persons used solely for clerical duties, such as recordkeeping, cashiering, bookkeeping and delivery of medications released by the pharmacist are not considered pharmacy technicians.

(3) "Collaborative Drug Therapy Management" means the participation by a pharmacist in the management of drug therapy pursuant to a written protocol that includes information specific to the dosage, frequency, duration and route of administration of the drug, authorized by a practitioner and initiated upon a prescription order for an individual patient and:

(a) Is agreed to by one pharmacist and one practitioner; or

(b) Is agreed to by one or more pharmacists at a single pharmacy registered by the board and one or more practitioners in a single organized medical group, such as a hospital medical staff, clinic or group practice, including but not limited to organized medical groups using a pharmacy and therapeutics committee.

(4) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(a) As the result of a practitioner's prescription drug order, or initiative based on the relationship between the practitioner, the pharmacist and the patient, in the course of professional practice; or

(b) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; or

(c) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(d) As a component of a Shared Pharmacy Service agreement as defined in section (21) of this rule.

(5) "Confidential Information" means any patient information obtained by a pharmacist or pharmacy.

ADMINISTRATIVE RULES

(6) "Consulting Pharmacist" means a pharmacist that provides a consulting service regarding a patient medication, therapy management, drug storage and management, security, education, or any other pharmaceutical service.

(7) The "Container" is the device that holds the drug and that is or may be in direct contact with the drug.

(8) "Dispensing or Dispense" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(9) "Interpretation and evaluation of prescription orders" means the review of the order for therapeutic and legal correctness. Therapeutic review includes identification of the prescription drug ordered, its applicability and its relationship to the other known medications used by the patient and determination of whether or not the dose and time interval of administration are within accepted limits of safety. The legal review for correctness of the prescription order includes a determination that the order is valid and has not been altered, is not a forgery, is prescribed for a legitimate medical purpose, contains all information required by federal and state law, and is within the practitioner's scope of practice.

(10) "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer or distributor of a non-prescription drug or commercially packaged legend drug or device.

(11) "Monitoring of therapeutic response or adverse effect of drug therapy" means the follow up of the therapeutic or adverse effect of medication upon a patient, including direct consultation with the patient or his agent and review of patient records, as to result and side effect, and the analysis of possible interactions with other medications that may be in the medication regimen of the patient. This section shall not be construed to prohibit monitoring by practitioners or their agents.

(12) "Medication Therapy Management (MTM)" means a distinct service or group of services that is intended to optimize therapeutic outcomes for individual patients. Medication Therapy Management services are independent of, but can occur in conjunction with, the provision of a medication product.

(13) "Nationally Certified Exam" means an exam that is approved by the Board which demonstrates successful completion of a Specialized Education Program. The exam must be reliable, psychometrically sound, legally defensible and valid.

(14) "Non-legend drug" means a drug which does not require dispensing by prescription and which is not restricted to use by practitioners only.

(15) "Offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of pharmacy" means, among other things:

(a) The creation and retention of accurate and complete patient records;

(b) Assuming authority and responsibility for product selection of drugs and devices;

(c) Developing and maintaining a safe practice setting for the pharmacist, for pharmacy staff and for the general public;

(d) Maintaining confidentiality of patient information.

(16) "Oral Counseling" means an oral communication process between a pharmacist and a patient or a patient's agent in which the pharmacist obtains information from the patient (or agent) and the patient's pharmacy records, assesses that information and provides the patient (or agent) with professional advice regarding the safe and effective use of the prescription drug for the purpose of assuring therapeutic appropriateness.

(17) Participation in Drug Selection and Drug Utilization Review:

(a) "Participation in drug selection" means the consultation with the practitioner in the selection of the best possible drug for a particular patient.

(b) "Drug utilization review" means evaluating prescription drug order in light of the information currently provided to the pharmacist by the patient or the patient's agent and in light of the information contained in the patient's record for the purpose of promoting therapeutic appropriateness by identifying potential problems and consulting with the prescriber, when appropriate. Problems subject to identification during drug utilization review include, but are not limited to:

(A) Over-utilization or under-utilization;

(B) Therapeutic duplication;

(C) Drug-disease contraindications;

(D) Drug-drug interactions;

(E) Incorrect drug dosage;

(F) Incorrect duration of treatment;

(G) Drug-allergy interactions; and

(H) Clinical drug abuse or misuse.

(18) "Pharmaceutical Care" means the responsible provision of drug therapy for the purpose of achieving definite outcomes that improve a patient's quality of life. These outcomes include:

(a) Cure of a disease;

(b) Elimination or reduction of a patient's symptomatology;

(c) Arrest or slowing of a disease process; or

(d) Prevention of a disease or symptomatology.

(19) "Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board but has not completed the specialized education program pursuant to OAR855-025-0010.

(20) "Prescription released by the pharmacist" means, a prescription which has been reviewed by the pharmacist that does not require further pharmacist intervention such as reconstitution or counseling.

(21) "Prohibited conduct" means conduct by a licensee that:

(a) Constitutes a criminal act against a patient or client; or

(b) Constitutes a criminal act that creates a risk of harm to a patient or client.

(22) "Proper and safe storage of drugs and devices and maintenance of proper records therefore" means housing drugs and devices under conditions and circumstances that:

(a) Assure retention of their purity and potency;

(b) Avoid confusion due to similarity of appearance, packaging, labeling or for any other reason;

(c) Assure security and minimize the risk of their loss through accident or theft;

(d) Accurately account for and record their receipt, retention, dispensing, distribution or destruction;

(e) Protect the health, safety and welfare of the pharmacist, pharmacy staff and the general public from harmful exposure to hazardous substances.

(23) "Responsibility for advising, when necessary or when regulated, of therapeutic values, content, hazards and use of drugs and devices" means advice directly to the patient, either verbally or in writing as required by these rules or federal regulation, of the possible therapeutic response to the medication, the names of the chemicals in the medication, the possible side effects of major importance, and the methods of use or administration of a medication.

(24) "Shared Pharmacy Service" means a written agreement, that has been approved in writing by the board, that exists for the processing by a pharmacy of a request from another pharmacy or a practitioner licensed to prescribe the drug, to fill or refill a prescription or a drug order, or to perform processing functions including but not limited to:

(a) Dispensing;

(b) Drug utilization review;

(c) Claims adjudication;

(d) Refill authorizations;

(e) Compounding; and

(f) Therapeutic interventions.

(25) "Specialized Education Program" means:

(a) A program providing education for persons desiring licensure as pharmacy technicians that is approved by the board and offered by an accredited college or university that grants a two-year degree upon successful completion of the program; or

(b) A structured program approved by the board and designed to educate pharmacy technicians in one or more specific issues of patient health and safety that is offered by:

(A) An organization recognized by the board as representing pharmacists or pharmacy technicians;

(B) An employer recognized by the board as representing pharmacists or pharmacy technicians; or

(C) A trade association recognized by the board as representing pharmacies.

(26) "Supervision by a pharmacist" means being stationed within the same work area as the pharmacy technician or certified pharmacy technician being supervised, coupled with the ability to control and be responsible for the pharmacy technician or certified pharmacy technician's action.

(27) "Therapeutic substitution" means the act of dispensing a drug product with a different chemical structure for the drug product prescribed under circumstances where the prescriber has not given clear and conscious direction for substitution of the particular drug for the one which may later be ordered.

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(28) “Unprofessional conduct” means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of pharmacy or conduct that endangers the health, safety or welfare of a patient or client. Unprofessional conduct includes but is not limited to:

(a) Fraud or misrepresentation in dealings relating to pharmacy practice with:

- (A) Customers, patients or the public;
- (B) Practitioners authorized to prescribe drugs, medications or devices;
- (C) Insurance companies;
- (D) Wholesalers, manufacturers or distributors of drugs, medications or devices;
- (E) Health care facilities;
- (F) Government agencies; or
- (G) Drug outlets.

(b) Illegal use of drugs, medications or devices without a practitioner’s prescription, or otherwise contrary to federal or state law or regulation;

(c) Any use of intoxicants, drugs or controlled substances that endangers or could endanger the licensee or others;

(d) Theft of drugs, medications or devices, or theft of any other property or services under circumstances which bear a demonstrable relationship to the practice of pharmacy;

(e) Dispensing a drug, medication or device where the pharmacist knows or should know due to the apparent circumstances that the purported prescription is bogus or that the prescription is issued for other than a legitimate medical purpose, including circumstances such as:

- (A) Type of drug prescribed;
- (B) Amount prescribed; or
- (C) When prescribed out of context of dose.

(f) Any act or practice relating to the practice of pharmacy that is prohibited by state or federal law or regulation;

(g) The disclosure of confidential information in violation of Board rule;

(h) Engaging in collaborative drug therapy management in violation of ORS Chapter 689 and the rules of the Board;

(i) Authorizing or permitting any person to practice pharmacy in violation of the Oregon Pharmacy Act or the rules of the Board;

(j) Any conduct or practice by a licensee or registrant which the Board determines is contrary to accepted standards of practice; or

(k) Failure to cooperate with the Board pursuant to OAR 855-001-0035.

(29) “Verification” means the confirmation by the pharmacist of the correctness, exactness, accuracy and completeness of the acts, tasks, or functions performed by an intern or a pharmacy technician or a certified pharmacy technician.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.305, 689.405 & 689.455

Hist.: 1PB 2-1979(Temp), f. & cf. 10-3-79; 1PB 2-1980, f. & cf. 4-3-80; 1PB 3-1984, f. & cf. 4-16-84; PB 2-1988, f. & cert. ef. 5-3-88; PB 2-1989, f. & cert. ef. 1-30-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2006, f. & cert. ef. 6-9-06; BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10; BP 3-2012, f. & cert. ef. 6-19-12

855-043-0002

Definitions

In this division of rules:

(1) “Administer” means the direct application of a drug or device whether by injection, inhalation, ingestion, or any other means, to the body of a patient by:

- (a) A practitioner or the practitioner’s authorized agent; or
- (b) The patient at the direction of the practitioner.

(2) “Dispense” or “Dispensing” means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(3) “Formulary” means a list of drugs or classes of drugs, or a list of disease states, health conditions or preventative measures such as immunization or birth control approved by the Board or by the Department of Human Services (DHS).

(4) “Health Officer” means a physician licensed by the Oregon Medical Board or the Oregon Board of Naturopathic Medicine and employed by or under contract with a county or district health department or DHS.

(5) “Supervising Physician Dispensing Outlet” (SPDO) means any clinic, office, health care center, treatment center, or other establishment

from which a physician assistant dispenses drugs, but that is not otherwise registered with the Board in the category of Retail Drug Outlet.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: PB 2-1992, f. & cert. ef. 3-26-92; PB 4-1992, f. & cert. ef. 8-25-92; Renumbered from 855-043-0120 by BP 1-2010, f. & cert. ef. 2-8-10; BP 3-2012, f. & cert. ef. 6-19-12

855-043-0405

Purpose and Scope

A supervising physician or supervising physician organization that supervises a physician assistant with dispensing authority must register the dispensing site with the Board as a Supervising Physician Dispensing Outlet (SPDO) and must comply with the rules in OAR chapter 855, division 43.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34

Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0410

Registration

(1) A Supervising Physician Dispensing Outlet must register with the Board as a SPDO in the category of Retail Drug Outlet on a form provided by the Board, and must renew its registration annually on a renewal form provided by the Board.

(2) The initial application must state the location of the SPDO and the name of the person applying for registration. When the person applying for registration is not the owner of the dispensing site, the application must disclose the name and address of the owner and the applicant’s affiliation with the owner.

(a) If more than one individual owns the dispensing site, the names and addresses of the partners or persons holding the three largest ownership interests in the dispensing site must be disclosed on the application.

(b) If the owner is a corporation, the application must state the name of the corporation as filed with the Corporation Division of the Oregon Secretary of State, including the names of the corporation’s officers.

(3) Upon request by the Board, the applicant must furnish such information as required by the Board regarding the partners, stockholders, or other persons not named in the application.

(4) An initial application must be accompanied by the fee established in division 110 of this chapter.

(5) A certificate of registration will be issued upon Board approval of the application.

(6) All registration renewal applications must be accompanied by the annual renewal fee established in Division 110 of this chapter and must contain the information required in sections (2) and (3) of this rule.

(7) The SPDO registration expires March 31, annually. If the annual renewal fee referred to in section (5) of this rule is not paid by February 28 of the current year, the applicant for renewal must submit the delinquent fee established in division 110 of this chapter with the renewal application.

(8) The registration is not transferable and the registration fee cannot be prorated.

(9) The registrant must notify the Board, within 15 days, of any substantial change to the information provided on the registration application. Substantial change shall include but not be limited to: change of ownership; change of business address; change of normal business hours; any disciplinary action taken or pending by any state or federal authority against the registrant, or any of its principals, owners, directors, officers, consultant pharmacist or supervising physician.

(10) A new registration form is required for a change of ownership or location and must be submitted to the Board with the fees as specified in division 110 of this chapter within 15 days of the change.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34

Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0415

Consulting Pharmacist

(1) A SPDO must retain a pharmacist licensed in Oregon for consultation purposes.

(2) The consulting pharmacist must conduct and document an annual inspection of the outlet on a form provided by the Board. The completed inspection report form must be filed in the outlet, retained on file for three years and be available to the Board for inspection.

(3) The duties of the consulting pharmacist shall be clearly defined in writing within the organization. The consulting pharmacist must:

(a) Develop policies and procedures for the outlet in collaboration with the supervising physician; and

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(b) Work in consultation with the supervising physician in the development of the formulary of drugs and classes of drugs for the outlet.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0420

Policies and Procedures

The registered SPDO must:

- (1) Maintain written policies and procedures for drug management, including storage, security, integrity, access, dispensing, disposal, record keeping and accountability;
- (2) Maintain all drug records required by federal and state law;
- (3) Establish procedures for procurement of drugs; and
- (4) Establish procedures to train physician assistants who dispense drugs and to ensure the continued competence of physician assistants who dispense drugs.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0425

Security

(1) All drugs must be kept in a locked drug cabinet or designated drug storage area that is sufficiently secure to deny access to unauthorized persons. The drug cabinet or designated drug storage area must remain locked and secured when not in use.

(2) No drug dispensing machine may be placed in a waiting room or an area that is accessible by the public.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0430

Storage of Drugs

All drugs, including drug samples, must be stored under conditions that ensure proper sanitation, temperature, light, ventilation, moisture control, and any other condition recommended by the manufacturer.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0435

Labeling

(1) A prescription must be labeled with the following information:

- (a) Unique identifier;
- (b) Name of patient;
- (c) Name of prescriber;
- (d) Name, address, and phone number of the clinic;
- (e) Date of dispensing;
- (f) Name and strength of the drug. If the drug does not have a brand name, then the generic name of the drug and the drug manufacturer must be stated;

(g) Quantity dispensed;

(h) Directions for use;

(i) Initials of the physician assistant or practitioner dispensing;

(j) Cautionary statements, if any, as required by law; and

(k) Manufacturer's expiration date, or an earlier date if preferable, after which the patient should not use the drug; and

(l) Any dispensed prescription medication, other than those in unit dose or unit of use packaging, shall be labeled with its physical description, including any identification code that may appear on tablets and capsules.

(2) Notwithstanding any other requirements in this rule, when a drug is dispensed in the practice of an Expedited Partner Therapy treatment protocol, as described in OAR 855-041-4000 through 4005, the name of the patient may be omitted.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0440

Dispensing and Drug Delivery

(1) Drugs dispensed from a SPO by a physician assistant with dispensing authority or a practitioner must be personally dispensed by the practitioner or physician assistant.

(2) Prior to dispensing a medication a drug utilization review must be performed by the physician assistant or practitioner which includes but is not limited to drug interactions, drug allergies and duplicate drug therapy.

(3) The physician assistant or practitioner must orally counsel the patient concerning all new drugs, unless circumstances would render oral counseling ineffective.

(4) When dispensed, a drug must be accompanied by written information that contains at least the following information:

- (a) Drug name, class and indications;
- (b) Proper use and storage;
- (c) Common side effects;
- (d) Precautions and contraindications; and
- (e) Significant drug interactions.

(5) Each authorized dispenser of a prescription drug product for which a Medication Guide is required must provide the Medication Guide directly to each patient or patient's agent when the product is dispensed, unless an exemption applies.

(6) Any other requirement of State or federal law.

(7) A SPDO must dispense a drug in a new container that complies with the current provisions of the Federal Consumer Packaging Act (Public Law 91-601, 91st Congress, S. 2162) and rules or regulations and with the current United States Pharmacopoeia/National Formulary monographs for preservation, packaging, storage and labeling.

(8) Drugs must be prepackaged by a pharmacy or manufacturer registered with the Board.

(9) A SPDO may not accept the return of drugs from a previously dispensed prescription and must maintain a list of sites in Oregon where drugs may be disposed.

(10) The most current issue of at least one pharmaceutical reference with current, properly filed supplements and updates appropriate to and based on the standards of practice for the setting.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0445

Drug Dispensing Training Program

A physician assistant must complete a drug dispensing training program jointly developed by the Oregon Medical Board and the Board of Pharmacy before dispensing drugs to patients.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0450

Disposal of Drugs

Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be documented, quarantined and physically separated from other drugs until they are destroyed or returned to their supplier.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-043-0455

Record Keeping

(1) A dispensing record must be maintained separately from the patient chart and kept for a minimum of three years. The record must show, at a minimum, the following:

- (a) Name of patient;
- (b) Unique identifier;
- (c) Dose, dosage form, quantity dispensed and either the brand name of drug, or generic name and name of manufacturer or distributor;
- (d) Directions for use;
- (e) Date of dispensing; and
- (f) Initials of person dispensing the prescription.

(2) All records of receipt and disposal of drugs must be kept for a minimum of three years.

(3) Records documenting training required by OAR 855-043-0445 must be kept for three years.

(4) All records required by these rules or by other State and federal law must be readily retrievable and available for inspection by the Board.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.305, 2012 OL Ch 34
Hist.: BP 3-2012, f. & cert. ef. 6-19-12

855-080-0100

Animal Euthanasia

(1) The following requirements shall be met in order for a humane society or animal control agency to be registered or registration renewed to allow the purchase, possession and administration of sodium pentobarbital for euthanizing injured, sick, homeless or unwanted domestic pets and other animals:

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(a) Storage. All supplies of sodium pentobarbital shall be kept in a locked cabinet. An assigned person designated in writing shall be responsible for the security of the sodium pentobarbital. Such designated person shall allow withdrawal of the drug only to a person certified by the Oregon State Veterinary Medical Examining Board to administer sodium pentobarbital;

(b) Records. The following records shall be made at the time of the occurrence and shall be maintained for a minimum of three years, available for inspection by the Board of Pharmacy and its agents:

(A) A record of the withdrawal of sodium pentobarbital, signed by the person who takes possession of the sodium pentobarbital for administration;

(B) A record of the weight, species of animal and dosage administered for euthanasia signed by the person who administers the drug and by the designated person responsible for security;

(C) A record of all wastage signed by the person administering the drug and the designated person responsible for security; and

(D) A weekly record of verification of the stock on hand, minus the amounts withdrawn for administration, signed by the designated person responsible for security;

(E) A record of disposal of any expired or unwanted sodium pentobarbital. Disposal shall be in a conformance with 21 CFR 1307.21.

(c) Audits. The registrant shall submit to random audits of records and analysis of prepared solutions by the State Board of Pharmacy or its agents.

(2) The fee for registration shall be paid as specified in division 110 of this chapter of rules.

(3) The Board will suspend or revoke the registration of any humane society or animal control agency which allows a person to administer sodium pentobarbital who is not certified by the Oregon State Veterinary Medical Examining Board to administer such drug.

Stat. Auth.: ORS 475.095, 475.190, 689.205

Stats. Implemented: ORS 689.151 & 689.155

Hist.: 1PB 2-1984, f. & ef. 3-7-84; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; BP 6-2011(Temp), f. 10-20-11, cert. ef. 10-31-11 thru 4-27-12; BP 7-2011(Temp), f. & cert. ef. 12-15-11 thru 4-27-12; Administrative correction, 5-25-12; BP 3-2012, f. & cert. ef. 6-19-12

Rule Caption: Amends Class II Wholesaler definition to include Oxygen USP.

Adm. Order No.: BP 4-2012(Temp)

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12 thru 12-16-12

Notice Publication Date:

Rules Amended: 855-065-0005

Subject: This rule amends the definition of Class II Wholesaler to include Oxygen USP.

The complete text of these rules is available on the Board's website at www.pharmacy.state.or.us

Rules Coordinator: Karen MacLean—(971) 673-0001

855-065-0005

Definitions

(1) "Authenticate" means to verify that each transaction listed on the pedigree and other accompanying documentation has occurred and is accurately recorded.

(2) "Authorized Distributor of Record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with either or both of the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; or

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer no less than monthly.

(3) "Broker" means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the brokered substance.

(4) "Chain Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and performs intra company sales or transfers of drugs to a group of chain pharmacies that have the same common ownership and control.

(5) "Closed Door Pharmacy" means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(6) "Co-Manufacturing Partner" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

(7) "Common Carrier" means an organization that is available to the public to transport a product or service using its facilities, or those of other carriers.

(8) "Contraband Drug" means a drug that is counterfeit, stolen, misbranded, obtained by fraud, or purchased by an entity for its own use and placed in commerce in violation of an own-use agreement for that drug.

(9) "Cooperative Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization or pharmacy buying cooperative and distributes drugs exclusively to its members. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Cooperative Pharmacy Warehouse must also be listed as an Authorized Distributor of Record for that manufacturer.

(10) "Designated Representative" means an individual designated by each wholesale distributor registered by the Board who will serve as the primary contact person for the wholesale distributor with the Board and who is responsible for managing the company's operations at that registered location.

(11) "Drop Shipment" means a drug transaction whereby the manufacturer, that manufacturer's co-manufacturing partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor delivers a drug directly to a chain pharmacy warehouse, a cooperative pharmacy warehouse, a pharmacy, or other person authorized to administer or dispense prescription drugs to a patient, but transfers title to the drug to a wholesale distributor. A drop shipment shall be considered as part of a normal chain of distribution as defined in section (16) of this rule.

(12) "Drug Sample" means a unit of a drug that is intended to promote the sale of the drug, but which is not itself for sale.

(13) "Intra Company Transfer" means the transfer of any drug between a division, subsidiary, parent, and an affiliated or related company under the common ownership and control of a corporate entity.

(14) "Manufacturer" means anyone, including a manufacturer's co-manufacturing partner, who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, except when the process is part of a shared pharmacy service agreement as defined in OAR 855-006-0005.

(15) "Manufacturer's Exclusive Distributor" means an entity, including a manufacturer's wholly owned distributor, that contracts with a manufacturer who is registered under Division 60 of this chapter of rules, to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and takes title to that manufacturer's drug, but does not have general responsibility to direct the drug's sale or disposition. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Manufacturer's Exclusive Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(16) "Normal Chain of Distribution" means a chain of distribution, including a drop-shipment, for a prescription drug that goes from: a manufacturer; a manufacturer's co-manufacturing partner; a manufacturer's exclusive distributor; or a manufacturer's third-party logistics provider to:

(a) A pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(b) A manufacturer's authorized distributor of record, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(c) A manufacturer's authorized distributor of record, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(d) A chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(e) A manufacturer's authorized distributor of record, to a specialty wholesaler, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(f) A manufacturer's authorized distributor of record to a cooperative pharmacy warehouse, to a member of the affiliated group purchasing organ-

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ization or pharmacy buying cooperative, to a patient or a person authorized to administer or dispense a prescription drug to a patient.

(17) "Pedigree" means a statement or record in a written or electronic form that accurately records each wholesale distribution of a prescription drug from the sale by a manufacturer through acquisition and sale by any wholesale distributor or repackager until final sale to a pharmacy or other person authorized to administer or dispense the drug. The pedigree must include, but not be limited to, the following information for each transaction:

(a) The source of the prescription drug, including the name and principal address of the seller;

(b) The proprietary and established name of the prescription drug, the National Drug Code number, the amount of the prescription drug, its dosage form and dosage strength, the date of the purchase, the sales invoice number or other unique shipping document number that identifies the transaction, container size, number of containers, expiration date, and lot number or control number of the prescription drug;

(c) The business name and address of each owner of the prescription drug and its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the prescription drug.

(18) "Prescription Drug" means any drug required by law to be dispensed only by a prescription.

(19) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(20) "Specialty Wholesale Distributor" means an entity that exclusively distributes a limited product line of drugs to a specific group of pharmacies or registered practitioners as approved in writing by the Board. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Specialty Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(21) "Third-Party Logistics Provider" means an entity that contracts with a manufacturer who is registered under these rules to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, but does not take title to the drug or have general responsibility to direct the sale or disposition of the drug. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Third-Party Logistics Provider must also be listed as an Authorized Distributor of Record for that manufacturer.

(22) "Wholesale Distribution" means distribution of a drug to a person other than a consumer or patient, but does not include:

(a) Delivery by a retail pharmacy of a prescription drug to a patient or patient's agent pursuant to the lawful order of a licensed practitioner.

(b) The sale of minimal quantities of a prescription drug by retail pharmacies to licensed practitioners for office use.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, including but not limited to transfer of a drug by a pharmacy to another pharmacy to alleviate a temporary shortage.

(d) Intra company transfer of drugs as defined in these rules.

(e) The lawful distribution of a drug sample by a manufacturer's or a distributor's representative.

(f) The sale of a drug by a charitable organization described under 501(c)(3) of the Internal Revenue Code to a non-profit affiliate of the organization to the extent permitted by law.

(g) The purchase or acquisition of a drug by a hospital or other health care entity that is a member of a group purchasing organization, for the hospital's or health care entity's own use, from the group purchasing organization or from other hospitals or health care entities that are members of the organization or under common control.

(h) The transfer of a prescription drug between pharmacies pursuant to a shared pharmacy service agreement as defined in OAR 855-006-0005.

(i) The distribution by a manufacturer, as part of a prescription assistance program, of a drug intended for a specific patient, to a person authorized to prescribe, administer or dispense prescription drugs.

(j) The sale, purchase, or trade of blood and blood components intended for transfusion.

(k) Drug returns, when conducted in accordance with state and federal laws and regulations. A drug return includes the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled drugs to the original manufacturer, wholesale distributor, or to a third-party returns processor or reverse wholesaler, and the returns of saleable drugs to the original manufacturer or wholesaler.

(L) The transporting of a drug by common carrier where the common carrier does not take title to the drug and does not have responsibility to direct the drug's sale or distribution.

(m) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy from or with another pharmacy.

(n) The distribution of drugs by a manufacturer registered under Division 60 of this chapter of rules of its own products to a person other than a patient.

(23) "Wholesale Distributor" means any entity engaged in the wholesale distribution of drugs, including any entity whose business name appears on any invoice or other type of shipping document indicating possession or title. The term "Wholesale Distributor" includes but is not limited to, own-label distributors; private-label distributors; warehouses, including manufacturers' and distributors' warehouses; drug wholesalers or distributors; independent wholesale drug traders; third-party logistics providers; cooperative pharmacy warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(24) "Wholesaler" means any wholesale distributor:

(a) "Class I Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, or poisons are sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally licensed drug outlets or persons;

(b) "Class II Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which any of the products in paragraphs (A) -(E) below are stored, or offered for sale or distribution at wholesale to a drug outlet or practitioner legally authorized to resell, distribute, dispense or administer:

(A) Non-prescription drugs;

(B) Drugs distributed exclusively for veterinary use. If any prescription drugs not intended for veterinary use are offered for sale, the wholesaler must register as a Class I wholesaler;

(C) Prescription devices that do not contain a prescription drug;

(D) Drugs or devices possessed by a state or local government agency, or non-profit relief organization approved by the Board.

(E) Oxygen USP.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 4-2012(Temp), f. & cert. ef. 6-19-12 thru 12-16-12

Rule Caption: Amends fees to add fees for the registration and renewal of Supervising Physician Dispensing Outlets.

Adm. Order No.: BP 5-2012(Temp)

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12 thru 12-16-12

Notice Publication Date:

Rules Amended: 855-110-0007

Subject: These rules implement a licensing and delinquent fee for the registration and renewal of Supervising Physician Dispensing Outlets as required by 2012 Senate Bill 1565

The complete text of these rules is available on the Board's website at www.pharmacy.state.or.us

Rules Coordinator: Karen MacLean—(971) 673-0001

855-110-0007

Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually – \$100. Delinquent renewal fee (postmarked after February 28) – \$25.

(2) Drug Distribution Agent. Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(3) Drug Room (including correctional facility). Expires March 31 annually – \$100. Delinquent renewal fee (postmarked after February 28) – \$75.

(4) Manufacturer. Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

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(5) Medical Device, Equipment & Gas Class C. Expires January 31 annually – \$50. Delinquent renewal fee (postmarked after December 31) – \$25.

(6) Nonprescription Class A. Expires January 31 annually – \$50. Delinquent renewal fee (postmarked after December 31) – \$25.

(7) Nonprescription Class B. Expires January 31 annually – \$50. Delinquent renewal fee (postmarked after December 31) – \$25.

(8) Nonprescription Class D. Expires January 31 annually – \$100. Delinquent renewal fee (postmarked after December 31) – \$25.

(9) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer – \$100. Expires December 31 annually.

(10) Re-inspection fee – \$100. Applies to any re-inspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(11) Retail or Institutional Drug Outlet. Expires March 31 annually – \$300. Delinquent renewal fee (postmarked after February 28) – \$75.

(12) Wholesaler Class I, Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(13) Wholesaler Class II. Expires September 30 annually – \$400. Delinquent renewal fee (postmarked after August 31) – \$100.

(14) Remote Dispensing Machine/Facility. Expires March 31 annually – \$100. Due by February 28 annually.

(15) Charitable Pharmacy. Expires March 31 annually – \$75. Delinquent renewal fee (postmarked after February 28) – \$25.

(16) Home Dialysis. Expires March 31 annually – \$300. Delinquent renewal fee (postmarked after February 28) – \$75.

(17) Supervising Physician Dispensing Outlet. Expires March 31 annually – \$300. Delinquent renewal fee (postmarked after February 28) – \$25.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.774, 2012 OL Ch 34

Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 6-2010, f. & cert. ef. 6-29-10; BP 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; BP 8-2011, f. & cert. ef. 12-15-11; BP 5-2012(Temp), f. & cert. ef. 6-19-12 thru 12-16-12

Bureau of Labor and Industries Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning July 1, 2012.

Adm. Order No.: BLI 6-2012

Filed with Sec. of State: 7-2-2012

Certified to be Effective: 7-2-12

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2012.

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 publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated July 1, 2012, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2012, 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* dated July 1, 2012, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f.

& cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06, cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06, cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07, cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07, cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07, cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef. 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11; BLI 7-2011, f. & cert. ef. 10-12-11; BLI 10-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 4-2012, f. & cert. ef. 3-29-12; BLI 6-2012, f. & cert. ef. 7-2-12

Department of Agriculture Chapter 603

Rule Caption: Regulation of Egg-Laying Hens Confined in an Enclosure.

Adm. Order No.: DOA 20-2012

Filed with Sec. of State: 7-3-2012

Certified to be Effective: 7-3-12

Notice Publication Date: 4-1-2012

Rules Adopted: 603-018-0000, 603-018-0005, 603-018-0010, 603-018-0015, 603-018-0020, 603-018-0025

Subject: ORS Oregon Law 2011 Chapter 436 (ORS 632.840) requires the Oregon Department of Agriculture to develop administrative rules for the management of egg-laying hens housed in cages and to regulate the distribution of eggs and egg products within Oregon. These rules provide clarity on the standards that must be met for egg laying hens in cages, the requirements for distribution of eggs and egg products in Oregon, how to provide proof of meeting such standards, responsibilities of distributors and purchasers of eggs and egg products and what information is to be included in Farm Business Plans. These rules also include enforcement alternatives, civil penalty implementation and department access and subpoena authority.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-018-0000

Definitions

For purposes of OAR 603-018-0003 to 603-018-0013:

ADMINISTRATIVE RULES

(1) "Commercial egg-laying farm" means any commercial farm as defined in Oregon Laws 2011 Chapter 436 that has caged egg-laying hens at any one location or in multiple locations.

(2) "Director" means the Director of the Oregon Department of Agriculture or the Director's authorized deputies or officers.

(3) "Distribute" means to import, consign, sell, offer for sale, barter, exchange or otherwise facilitate the supplying of eggs or egg products into or within Oregon.

(4) "Distributor" means the first person that distributes egg or egg products into or within Oregon.

(5) "Enforcement" means any documented action taken by the department to address a violation.

(6) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(7) "Sell" or "Sale" means to sell, offer for sale, expose for sale, or have in possession for sale.

(8) "Violation" is an act or omission that does not comply with a provision of Oregon Laws 2011 Chapter 436 or the administrative rules developed thereunder.

(9) "House Average" means a method of determining space allowance for hens by taking the total square inches of cage floor space within a layer house, divided by the number of hens in that house at the time of housing.

Stat. Auth.: ORS 632.840

Stats. Implemented: ORS 632.835 - 632.850

Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0005

Poultry Husbandry, Cage Size Standards for Egg Laying Hens

An owner or operator of a commercial egg-laying farm in Oregon may not confine an egg-laying hen in an enclosure that fails to comply with the following standards:

(1) Any enclosure constructed or otherwise acquired prior to December 31, 2003 must provide a minimum "house average" space allowance of 67 square inches of floor space per hen for White Leghorns, and 76 square inches of floor space per hen for Brown Egg Layers.

(2) Any enclosure constructed or otherwise acquired after December 31, 2003, but prior to January 1, 2012 must provide a minimum of 67 square inches of floor space per hen for White Leghorns, and 76 square inches of floor space per hen for Brown Egg Layers.

(3) Any enclosure constructed or otherwise acquired after January 1, 2012 must meet, or be convertible into enclosures that provides a minimum space allowance as follows:

(a) Enclosures must provide a minimum of 67 square inches of floor space per hen for White Leghorns, and 76 square inches of floor space per hen for Brown Egg Layers; and

(b) Must be convertible to an enclosure that allows a minimum of 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height; or

(c) Must allow a minimum of 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height.

Stat. Auth.: ORS 632.840

Stats. Implemented: ORS 632.835 - 632.850

Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0010

Standards for, and Documentation of, Production and Distribution of Eggs and Egg Products

(1) All eggs produced in a commercial egg-laying farm in Oregon or eggs or egg products distributed into or within Oregon must be from hens, that if confined during the production of the eggs, where in an enclosure that complies with OAR 603-018-0001 through 603-018-0007.

(2) Prior to distributing any eggs or egg products into, or within, this state, any person other than the retail end-user of shell eggs, must provide documentation to the ODA that the eggs or egg products originated from hens confined in an enclosure during the production of the eggs complies with OAR 603-018-0007(1). This documentation may include a copy of current UEP certification, AHA certification, or certification by an independent third party approved by the Director and show that the eggs or egg products were produced consistently with 603-018-003.

(3) If the documentation required in OAR 603-018-0007(2) of this section is not on file with ODA as a part of a Farm Business Plan as required in 603-018-0009, then prior to distributing any eggs or egg products in Oregon, a distributor of eggs or egg products must complete and submit to the ODA documentation establishing current UEP certification, AHA certification, or a notarized letter from an independent third party approved by the Director, certifying that the eggs or egg products were produced consistently with 603-018-0003.

(4) The documentation required by OAR 603-018-0007(2) must be submitted annually to the ODA.

(5) Any Oregon purchaser, other than the retail end-user of shell eggs, of eggs or egg products must maintain receipts or other documentation identifying each and every distributor from whom they received eggs, or egg products. Receipts or other documentation must be maintained for a period of three (3) years and made available to the ODA upon request.

(6) Eggs or egg products that are certified per section OAR 603-018-0007(2) of this section may not be sold in Oregon if they are comingled with non-certified eggs or egg products.

(7) A person may not fail, or refuse to submit documentation that eggs, or egg products sold in Oregon were produced consistently with the requirements in OAR 603-018-001 through 603-018-0007. Failure, or refusal to submit documentation to the department may result in an enforcement action including civil penalty.

(8) A person may not fail to possess, or refuse, to possess or maintain records as required in OAR 603-018-0007(4) of this section. Failure to possess, or refusal to possess and maintain documentation as required may result in an enforcement action including civil penalty.

(9) A person may not distribute eggs or egg products into or within Oregon that the person knows, or reasonably should know are a product of an egg-laying hen that has been confined in an enclosure that fails to comply with Oregon Laws 2011 Chapter 436 or OAR 603-018-0003. Any such distribution may result in an enforcement action including civil penalty.

Stat. Auth.: ORS 632.840

Stats. Implemented: ORS 632.835 - 632.850

Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0015

Commercial Egg-Laying Farm Business Plans

(1) Beginning July 1, 2012, upon renewal of an annual "Egg Breaker" or "Egg Handler" license issued by the ODA, all commercial egg laying farms in Oregon must submit to the department a Farm Business Plan describing the manner by which they intend to comply with 2026 conversion goals as outlined in Section 9 of Oregon Laws 2011 Chapter 436.

(2) If a commercial egg-laying farm in Oregon does not hold an "Egg Breaker" or "Egg Handler" license, a Farm Business Plan may be submitted to the department annually beginning July 1, 2012.

(3) A Farm Business Plan must include:

(a) Identification of the commercial egg-laying farm location(s) including address, contact information, signature of principal owner(s) or their authorized representative.

(b) The date the plan was written.

(c) A copy of a current UEP or AHA certification, or a notarized letter of certification by an independent third party approved by the Director that verifies that the eggs, or egg products are produced from hens, that if confined during the production of the eggs, where in an enclosure that complies with OAR 603-018-0001 through 603-018-0007.

(d) Percentage of total egg-laying hen capacity that currently meet, or exceed, UEP standards or standards described in OAR 603-018-0001 through OAR 603-018-0007.

(e) Percentage of total egg-laying hen capacity that meet, or exceed, AHA Enriched Colony Housing standards. The sum of (d) and (e) must equal 100%.

(f) Brief narrative explaining how the farm intends to meet the anticipated replacement timeline for the conversion of enclosures to enclosures that provide at a minimum 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height.

(4) Each person submitting a Farm Business Plan must maintain adequate documentation to support the information provided in the plan. These documents must be made available to the ODA upon its request.

(5) Verification of the information contained in a Farm Business Plan may be accomplished by physical inspection of the commercial egg-laying farm by the Director.

(6) A person may not fail or refuse to submit a Farm Business Plan as required in this section. Failure or refusal to submit a Farm Business Plan as required in this section is a violation subject to enforcement actions, up to and including civil penalty.

(7) A person may not fail or refuse to maintain adequate documentation to substantiate information contained in a Farm Business Plan. Failure or refusal to maintain, or provide, such documentation is a violation subject to enforcement actions, up to and including civil penalty.

(8) The department may request information to be included in a Farm Business Plan as deemed necessary to administer and enforce Oregon Laws 2011 Chapter 436 and the rules adopted thereunder.

Stat. Auth.: ORS 632.840

Stats. Implemented: ORS 632.835 - 632.850

Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

ADMINISTRATIVE RULES

603-018-0020

Department Access, Subpoena Authority

(1) As authorized by ORS 561.275 the State Department of Agriculture may have access at reasonable times to records, premises, materials or conveyances as necessary for the purpose of administering and enforcing Oregon Laws 2011 Chapter 436 and rules adopted thereunder.

(2) The department may obtain a subpoena to require the production of pertinent records related to the administration and enforcement of Oregon Laws 2011 Chapter 436 and rules adopted thereunder.

Stat. Auth.: ORS 632.840
Stats. Implemented: ORS 632.835 - 632.850
Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0025

Enforcement and Civil Penalties Generally

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty not to exceed \$2,500 for each violation of any provision of Oregon Laws 2011 Chapter 436 and rules adopted thereunder.

(2) In addition to a civil penalty or any other penalty provided by law, the department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, or other non-civil penalty action as authorized by law and as deemed necessary to attain compliance.

(3) Civil penalties are subject to ORS 183.745 and shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal.

Stat. Auth.: ORS 632.840
Stats. Implemented: ORS 632.835 - 632.850
Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

Rule Caption: Consolidates Immediately Supervised Pesticide Trainee licenses, adds recordkeeping requirements, clarifies supervision.

Adm. Order No.: DOA 21-2012

Filed with Sec. of State: 7-10-2012

Certified to be Effective: 7-10-12

Notice Publication Date: 5-1-2012

Rules Amended: 603-057-0006, 603-057-0120, 603-057-0135, 603-057-0150, 603-057-0500, 603-057-0525

Subject: The proposed amendments to the OAR 603-057 listed above remove and amend outdated administrative rule language, update and streamline processes and procedures regarding implementation of pesticide licensing, certification, recertification and enforcement as authorized by ORS 634. The deletions and changes do not effectively change the manner in which pesticide applicators, pesticide consultants or private applicators are licensed, accomplish recertification, or other aspects of licensing. The General Standards of Pesticide Applicator Competence, the Private Applicator Standards of Competence will now clearly include pesticide drift related mitigation measures. The educational sessions identified as CORE, will now clearly include the topics of pesticide drift related mitigation measures and pest resistance prevention. The inclusion of drift mitigation measures in the standard of competence for Pesticide Applicators will also apply to Pesticide Consultants by reference.

The proposed amendments to OAR 603-057-0500 and 603-057-0525 add a definition of a school and clearly allow the Department to take enforcement action appropriate for the exposure scenario presented when a pesticide application results in inappropriate pesticide residues on school property (pesticide drift).

The Agency supports the changes.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-057-0006

Pesticide Registration Fees

The annual registration fee for each pesticide product shall be \$160.
Stat. Auth.: ORS 634
Stats. Implemented: ORS 634
Hist.: AD 855(27-67), f. 10-9-67, ef. 1-1-68; AD 1008(22-73)(Temp), f. & ef. 12-5-73; AD 1014(4-74), f. 1-18-74, ef. 2-11-74; AD 7-1977, f. & ef. 4-5-77; AD 24-1981, f. & ef. 12-1-81; AD 17, f. & cert. ef. 11-15-89; DOA 21-1999, f. 9-30-99, cert. ef. 11-1-99; DOA 26-2001, f. & cert. ef. 11-6-01; DOA 38-2003(Temp), f. 10-15-03 cert. ef. 11-23-03 thru 5-19-04; DOA 40-2003, f. & cert. ef. 10-17-03; DOA 41-2003(Temp), f. 11-14-03, cert. ef. 11-23-03 thru 5-20-04; DOA 42-2003, f. & cert. ef. 12-23-04; DOA 17-2005(Temp), f. 10-14-05, cert. ef. 1-1-06 thru 6-29-06; DOA 3-2006, f. & cert. ef. 3-8-06; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0120

General Standards of Pesticide Applicator Competence

(1) Competence in the use or handling of pesticides shall be determined on the basis of written examinations which, in addition to the requirements of OAR 603-057-0125, shall include the following general standards:

(a) Comprehension of labeling format, labeling terminology, and the labeled warnings and instructions;

(b) Knowledge of safety factors to be considered, including need and use of protective clothing, first aid procedures in the event of accidents, symptoms of various pesticide poisonings, and proper storage, transportation, handling, and disposal methods;

(c) Knowledge of potential consequences to the environment from the use or misuse of pesticides, as influenced by climate, topography, vegetative buffers or other pesticide practices directly relating to protection of water, and existence of plant and/or animal life,;

(d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, calibration, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);

(e) Knowledge of methods of use or application, including the various formulations (dust, wettable powder, etc.) of pesticides, the compatibility of various pesticides, the types of application equipment or devices, and the times when various pesticide formulations or equipment would be appropriately used; and

(f) Knowledge and comprehension of existing laws and rules governing pesticide use or application, including classifications of various pesticides (highly toxic, restricted use, or general).

(2) The applicant shall be notified within 30 days of taking a written examination, as to the grade received in such examination and whether such grade is passing or failing. Such notification shall be deemed an "order" for the purposes of judicial review provided in ORS 183.480.

(3) An applicant for a pesticide applicator's license renewal shall be required to take a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section and OAR 603-057-0125 in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of 603-057-0150, the written examination shall be waived, except in the category "Regulatory Pest Control," subcategory "Livestock Protection Collar."

(4) If an applicant for a pesticide applicator's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the Department at the time of submitting an initial license application with applicable fee, the license examination may be waived.

(5) In the event an applicant for a pesticide applicator's license fails the written examination or re-examination, the applicant shall be qualified to take the examination again subject to the fee provided in subsection (7) of ORS 634.122.

Stat. Auth.: ORS 561 & 634
Stats. Implemented: ORS 634.306(5)
Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 15-1978, f. & ef. 9-15-78; AD 6-1997, f. & cert. ef. 6-11-97; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0135

Private Applicator Standards of Competence

(1) As provided in ORS 634.142, competence of a private applicator in the use or handling of pesticides shall be determined on the basis of a written examination and evidenced by the issuance of a certificate.

(2) A private applicator certificate shall be valid for a period of up to five calendar years from its issuance and expire on December 31 of the fifth year.

(3) An applicant for a private applicator's initial certificate or for a private applicator's renewal shall be required to successfully complete the written examination then in use for certification of private applicators. Successful completion of the written examination shall consist of correctly responding to at least 70 percent of the questions contained in the examination.

(4) In lieu of the written re-examination requirement of section (3) of this rule, an applicant for renewal of a private applicator certificate may attend pesticide training sessions approved by the Department, totaling 16 hours of Department approved pesticide use related instruction, during the period preceding the expiration of his/her certificate as follows:

ADMINISTRATIVE RULES

(a) An individual shall be required to attend the core pesticide training session and accumulate twelve additional units of Department approved pesticide training;

(b) Not more than eight units of Department approved pesticide training may be accumulated for recertification during a single 12-month period (January–December);

(c) Credit for attending core pesticide training can only be obtained twice during the five year certification period. The second core pesticide training session attended will be credited toward the twelve additional units of Department approved pesticide training required for recertification; and

(5) The core pesticide training required by section (4) of this rule shall consist of a total of at least 4 units of instruction (50–60 minutes of instruction per unit) on any one or more of the following topics:

(a) Principles of Integrated Pest Management as defined in ORS 634.650;

(b) Label Comprehension;

(c) Calibration (math and equipment);

(d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);

(e) Pest resistance prevention;

(f) Laws (environmental, endangered species, ground and surface water protection, worker protection standards (WPS), pesticide and pesticide container disposal); and

(g) Personal Safety (including personal protective equipment (PPE)).

(6) The submission of pesticide training sessions to the Department for approval, assignment of approved units of instruction and conditions relating thereto shall be done in accord with OAR 603-057-0150(2).

(7) The Department shall make available to each holder of a private applicator certificate of the expiration date of his/her certificate, of his/her attendance of core training, and of the number of units of additional Department approved pesticide training accumulated toward renewal of the certificate.

(8) The requirement for re-examination as specified in section (3) of this rule and the alternate procedure of attending Department approved pesticide training as specified in section (4) of this rule shall be waived if the applicant for a private applicators certificate renewal is a pesticide applicator or consultant. Said waiver shall be in effect only for the period the applicant is a pesticide applicator or consultant. Such waiver shall not affect the requirement for re-examination or the alternate procedure of OAR 603-057-0150 for pesticide applicators or consultants specified elsewhere in these administrative rules.

(9) The fee for a private applicator certificate shall be \$25.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.124

Hist.: AD 7-1977, f. & ef. 4-5-77; AD 8-1988, f. 8-30-88, cert. ef. 10-1-88; AD 8-1993, f. 6-8-93, cert. ef. 8-1-93; AD 8-1996, f. 7-12-96, cert. ef. 8-9-96; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0150

Alternative Requirements for Competence of Pesticide Applicator or Consultant License Renewal

In lieu of the written re-examination requirements of OAR 603-057-0120(3) or of 603-057-0145(4), an applicant for renewal of either a pesticide applicator's license or a pesticide consultant's license may accumulate at least 40 credits by attending pesticide-instructional sessions, accredited by the Department, during the five-year period preceding the year in which the written re-examination would be required, in accordance with the following:

(1) Not more than 15 credits may be accumulated for recertification purposes by an applicant during any one calendar year.

(2) In the event a pesticide instructional session is desired to be considered for accreditation by an applicant, such applicant shall submit to the Department, or person authorized by the Department, a written request for accreditation not less than 30 days prior to the scheduled session, which written request shall include the agenda and summary of each topic/presentation of the session, the session sponsor, the name and address of the session sponsor, and the time and place of such session. Upon receipt of such written request, the Department, in consultation with Oregon State University, shall evaluate the instructional value of the session and either deny accreditation or assign credits to the entire session or any portion thereof in a range from 1 to 15, assigning no more than one credit for each 50 to 60 minute period of instruction. No such instructional sessions shall be considered for accreditation that is less than two credit hours in length except for computer based trainings as approved by the Department. In the event an instructional session is accredited, the Department shall provide

the session instructor or sponsor with attendance certificates to be completed by such instructor or sponsor and returned by the applicants to the Department within 15 days after the session is completed. Under exceptional circumstances, as described in writing by an applicant, a written request for accreditation submitted later than 30 days prior to the scheduled session may be assigned credits in accordance with the provisions of this rule. Falsification of any part of such attendance certificate shall be considered grounds for license revocation proceedings by the Department.

(3) This section shall not apply to persons licensed to use the livestock protection collar in Oregon, in accordance with OAR-603-057-0120(3).

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306(5)

Hist.: AD 15-1978, f. & ef. 9-15-78; AD 10-1987, f. & ef. 7-1-87; AD 8-1996, f. 7-12-96, cert. ef. 8-9-96; AD 6-1997, f. & cert. ef. 6-11-97; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0500

Definitions

In addition to the definitions set forth in ORS 634.006 and OAR 603-057-0001, the following shall apply:

(1) "Director" means the Director of the Department of Agriculture or the Director's authorized deputies or officers.

(2) "Enforcement" means any documented action taken by the Department to address a violation.

(3) "Flagrant" means any violation where the Department has documented evidence that the respondent had actual knowledge of the law and knowingly committed the violation.

(4) "Gravity of Effect" is the ranking of a violation with respect to its effect, or potential effect, on the public interests reflected in ORS 634. A violation is ranked as high, medium, or low.

(5) "Gross negligence" means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act.

(6) "Injury" includes, but is not limited to, adulteration.

(7) "Intentionally" means the person acts, or fails to act, with a deliberate or an express purpose. For instance, a person acts intentionally when the person either consciously chooses not to determine whether a pesticide label authorizes use of a pesticide on a particular crop, or when the person knows that a pesticide label does not authorize use of the pesticide on a particular crop but still chooses to apply the pesticide to the crop.

(8) "Knowingly" means the person acts, or fails to act, with a practical understanding of, or a distinct skill in, the general activity that was obtained through such means as instruction, study, practice, or experience.

(9) "Magnitude of Violation" is the categorization of a violation in relation to other types of violations after considering its potential to affect the public interests reflected in ORS 634. A violation is categorized as major, moderate, or minor.

(10) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the Federal Government and any agency thereof.

(11) "Violation" is an act or omission that does not comply with a provision of ORS 634 that relates to pesticide application, sale, or labeling.

(12) "Willfully" means the person acted, or failed to act, after calculating and considering the potential effects and consequences.

(13) "Willful misconduct" means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act.

(14) "School" means

(a) A facility operating an Oregon prekindergarten or a federal Head Start program;

(b) A public or private educational institution offering education in all or part of kindergarten through grade 12;

(c) The Oregon School for the Deaf; and

(d) A regional academy operated by the Oregon Youth Authority.

Stat. Auth.: ORS 561, 634 & 183.335(5)

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

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0525

Civil Penalties; Magnitude of Violation and Gravity of Effect

(1) The Director will consider the magnitude of the violation and its gravity of effect when calculating a civil penalty for a violation.

(a) Determine the magnitude of the violation as specified in subsection (2) of this section.

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(b) Determine the gravity of effect pertinent to the violation as specified in subsection (3) of this section.

(2) Magnitude of Violation: Violations are categorized as to their magnitude of violation as follows:

(a) Category I (Major):

(A) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized (ORS 634.372(1));

(B) As a pesticide applicator or operator intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling (ORS 634.372(2));

(C) As a pesticide consultant recommend the application or use of any pesticide inconsistent with its labeling (ORS 634.372(2));

(D) As a pesticide dealer knowingly distribute any pesticide for application or use inconsistent with its labeling (ORS 634.372(2));

(E) Perform pesticide application activities in a faulty, careless or negligent manner (ORS 634.372(4));

(F) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5), OAR 603-057-0140). Four or more items of required information missing and/or incorrectly recorded;

(G) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Four or more items of required information missing and/or incorrectly recorded;

(H) Prepare required records, reports or application forms which are false, misleading or fraudulent (ORS 634.372(6));

(I) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if performed by a pesticide trainee (ORS 634.372(7));

(J) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). No license;

(K) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — No license;

(ii) Employee licensing — No license.

(L) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainees license and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). No license;

(M) Act as or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license (ORS 634.372(11));

(N) Act as or purport to be a pesticide consultant without first obtaining and maintaining a pesticide consultant's license (ORS 634.372(12));

(O) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate (ORS 634.372(13));

(P) As a person described in ORS 634.106(5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the Department (ORS 634.372(14));

(Q) Deliver, distribute, sell or offer for sale any pesticide which has been misbranded (ORS 634.372(15));

(R) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated (ORS 634.372(16));

(S) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such an application contrary to the conditions or terms of the permit so issued (ORS 634.372(20));

(T) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the Department, without first obtaining a permit for such use as provided in ORS 634.322(10); 634.372(21));

(U) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released there-from as provided in ORS 634.322(3) (634.372(22));

(V) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(b) Category II (Moderate):

(A) Operate a faulty or unsafe spray apparatus, aircraft or other application device or equipment (ORS 634.372(3));

(B) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). Two or three items of required information missing and/or incorrect;

(C) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Two or three items of required information missing and/or incorrectly recorded;

(D) As a pesticide applicator, work or engage in the application of any classes of pesticides without applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). Inappropriate license;

(E) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — Inappropriate license;

(ii) Employee licensing — Inappropriate license.

(F) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). Inappropriate license;

(G) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by ORS 634.016 (634.372(17));

(H) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored (ORS 634.372(18));

(I) Distribute sell or offer for sale any pesticide except in the manufacturers original unbroken package (ORS 634.372(19));

(J) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(c) Category III (Minor):

(A) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). One item of required information missing and/or incorrectly recorded;

(B) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required

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pesticides application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). One item of required information missing and/or incorrectly recorded;

(C) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(3) Gravity of Effect: The Director shall rank the violation as to its gravity of effect. Following are the factors that may be considered in assigning a gravity ranking to a specific violation. The existence of one or more factors determined to be of high level shall result in the gravity being ranked high level. Lacking any factor determined to be high level, the existence of one or more factors determined to be of medium level shall result in the gravity being ranked medium level. Lacking any factor determined to be of high or medium level shall result in the gravity being ranked low level:

(a) Rank — High Level:

(A) Human Threat: Injury or illness occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by the pesticide exposure;

(B) Environmental Threat:

(i) Evidence of injury to crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency; or

(ii) Evidence of surface or groundwater contamination documented by the Department or other appropriate federal or state agency.

(C) Pesticide:

(i) Designated as restricted use or highly toxic; or

(ii) Use or distribution halted due to emergency suspension.

(D) Conditions of Usage:

(i) Wide area of application;

(ii) Use in area of high population density (e.g., urban, suburban); or

(iii) Usage resulted in a pesticide residue or metabolite on a food or feed crop, on a raw agricultural commodity, or on a crop having food or feed by-products, and for which there is no tolerance or exemption from tolerance established, or for which the established tolerance was exceeded.

(iv) Usage resulting in a pesticide residue or a metabolite of a pesticide being deposited onto a school as defined in OAR 603-057-0500(14) by a person other than that authorized by the school's governing body as defined in ORS 634.700(2).

(b) Rank — Medium Level:

(A) Human Threat: Physical irritation occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by pesticide exposure.

(B) Environmental Threat: Symptoms of exposure visible in crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency.

(C) Conditions of Usage:

(i) Moderate area of application; or

(ii) Use in area of medium population density.

Stat. Auth.: ORS 561, 634 & 183.335(5)

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

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09; DOA 21-2012, f. & cert. ef. 7-10-12

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

Rule Caption: Mid-cycle code amendment for recreational vehicle construction.

Adm. Order No.: BCD 6-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 5-1-2012

Rules Amended: 918-525-0042

Subject: This rule amends one of the standards for the construction, conversion, alteration, and repair of recreational vehicles in Oregon. This rule amends the 2011 NFPA 70, National Electrical Code (NEC), Article 551-42 (C) to allow a sixth circuit in a 30 ampere power supply assembly.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-525-0042

Amendments to the Adopted Minimum Safety Standards

(1) Amend NFPA 1192, Section 5.4 Fuel-Burning Appliances by adding the following language after Section 5.4.1. "Solid-fuel-burning appliances shall not be installed in recreational vehicles, except where specifically permitted in these rules."

(2) Amend ANSI 119.5 as follows:

(a) Amend Chapter 1 by inserting the following language after Section 1-5.

(A) Each loft area shall have a minimum of one electrical light fixture and a convenience receptacle.

(B) Each enclosed stairway shall have a light fixture that is controlled by switches from both the top and the bottom of the stairway. The light fixture in subparagraph (A) of this rule may be used to serve this purpose.

(b) Amend Section 2-6 Fuel-Burning Appliances by inserting the following language after Section 2-6.1. "Wood-burning stoves, wood-burning fireplaces and pellet fired appliances may be installed if they are approved and listed for recreational vehicle use or for manufactured home use and installed according to the manufacturer's installation instructions."

(3) Effective April 9, 2012, amend NFPA 70, Article 551.42 (C) by adding a new exception. "Exception 2: A sixth circuit, without employing an energy management system, shall be permitted to serve only the power converter provided the combined load of all six circuits does not exceed the allowable load permitted by a five-circuit system."

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

Stat. Auth.: ORS 183.325 - 183.410 & 446.003 - 446.285

Stats. Implemented: ORS 446.185

Hist.: BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 3-2012(Temp), f. 4-6-12, cert. ef. 4-9-12 thru 9-30-12; BCD 6-2012, f. 6-27-12, cert. ef. 7-1-12

Rule Caption: Establishes specialized inspector training and certifications as authorized by House Bill 3462 (2009).

Adm. Order No.: BCD 7-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 6-1-2012

Rules Adopted: 918-098-1590, 918-098-1591

Rules Amended: 918-098-1510, 918-098-1530

Subject: HB 3462 (2009) authorized the Building Codes Division to create a program for training, qualifying, and certifying individuals as specialized building inspectors authorized to perform inspections and enforce portions of Oregon's specialty codes. These rules establish new inspector certifications to cover limited commercial and other multidisciplinary inspections that are not presently independently authorized by the division's existing inspector certifications. These rules establish the criteria for the Specialized Finals Inspector certification. This multidisciplinary certification allows an individual to perform all residential final inspections.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-098-1510

Purpose and Scope

(1) The specialized inspector certification program, in OAR 918-098-1510 through 918-098-1591, establishes a program for training, qualifying and certifying individuals as specialized building inspectors authorized to perform inspections and enforce portions of the state building code. Inspector certifications cover limited commercial and other multidisciplinary inspections that presently are not independently authorized by the division in existing inspector certifications.

(2) Specialized inspectors may, after receiving certification issued under these rules, conduct inspections as provided in these rules. These rules apply to applicants and certificate holders, training providers, and participating jurisdictions for the purposes of administering and enforcing the restrictions and requirements under these rules.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11; BCD 25-2011(Temp), f. & cert. ef. 8-18-11 thru 10-1-11; BCD 27-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-30-12; BCD 7-2012, f. 6-27-12, cert. ef. 7-1-12

918-098-1530

Training Programs

(1) Approved applicants must complete an appropriate division-approved training program and pass a division-approved examination for

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the desired specialized certification. Training program requirements are stated in OAR 918-098-1560 for the Specialized Solar Photo-Voltaic Inspector Certification, in OAR 918-098-1570 for the Specialized Plumbing Inspector Certification, and in OAR 918-098-1580 for the Specialized Electrical Inspector Certification, and in 918-098-1590 and 918-098-1591 for the Specialized Finals Inspector Certification.

(2) Instructor Qualifications. Specialized certification training course instructors must be approved by the division under these rules.

(a) Training course instructors may apply for approval as part of the course approval process or independent of the course approval process.

(b) Approved training course instructors must be qualified by training, licensure, and experience to teach the subject matter and supervise the corresponding fieldwork training inspections of a specialized inspector certification training program.

(c) Approved fieldwork supervisors must be qualified by training, licensure, and experience to perform the specialized inspector certification fieldwork inspections being performed.

(d) Division staff teaching training courses of supervising related fieldwork in the normal course of their duties are considered approved instructors for the purposes of these rules.

(3) Fieldwork Training. A specialized inspector certification applicant is eligible to perform the required fieldwork training after the applicant has begun the required academic coursework.

(4) Fieldwork Supervision. All specialized certification fieldwork training must be supervised and verified by an inspector with a valid Oregon Inspector Certification required to conduct the inspections being performed.

(a) An applicant's fieldwork training must be documented on a division-approved form and signed by the inspector who supervised the inspections.

(b) An inspector supervising and verifying an applicant's fieldwork training may not be qualified to conduct the inspections performed based solely on a specialized inspector certification issued according to these rules.

(5) Fieldwork Training Approval. A specialized inspector certification applicant must submit proof of completed fieldwork training to the division for verification and approval, and issuance of specialized inspector certification.

(6) Examination Approval. A specialized inspector certification applicant is eligible to take a certification examination after the division receives proof that the applicant has successfully completed the required academic coursework and fieldwork training.

Stat. Auth.: ORS 455.720, 455.730 & 455.735
Stats. Implemented: ORS 455.720, 455.730 & 455.735
Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11; BCD 15-2011, f. 6-30-11, cert. ef. 7-1-11; BCD 25-2011(Temp), f. & cert. ef. 8-18-11 thru 10-1-11; BCD 27-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-30-12; BCD 7-2012, f. 6-27-12, cert. ef. 7-1-12

918-098-1590

Specialized Finals Inspector Certification

(1) Scope of Activities and Authority. Specialized finals inspectors may upon receipt of this certification conduct final inspections of one- and two-family dwellings constructed under the **Oregon Residential Specialty Code** as provided by the Director through rule.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in OAR 918-098-1520, 918-098-1530 and this rule.

(3) Experience, Education, and Training Requirements.

(a) As a condition of entering a specialized finals inspector training program:

(A) Applicants must hold valid Oregon Inspector Certification and at least one appropriate certification to perform either residential or commercial mechanical, structural, electrical or plumbing inspections in Oregon; and

(B) Been employed as an inspector and performed inspections of the **Oregon Structural or Residential Specialty Codes, Oregon Mechanical Specialty Code, Oregon Electrical Specialty Code, or Oregon Plumbing Specialty Code** for a minimum of one year prior to applying for the Specialized Finals Inspector Certification.

(b) Applicants must complete a specialized finals inspector training program that meets the minimum requirements established by the division, and consists of:

- (A) Classroom coursework; and
- (B) Required fieldwork inspections

(c) After completion of the classroom coursework and required field inspections, applicants must successfully pass a division-approved examination.

(d) Certification. Upon completion of all training and after passing a division-approved examination, the division will certify an applicant as qualified to perform specialized finals inspections, and issue the appropriate documentation.

Stat. Auth.: ORS 455.720, 455.730 & 455.735
Stats. Implemented: ORS 455.720, 455.730 & 455.735
Hist.: BCD 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-30-12; BCD 7-2012, f. 6-27-12, cert. ef. 7-1-12

918-098-1591

Specialized Finals Inspector Certification Scope of Authority

(1) Specialized finals inspectors may upon receipt of this certification conduct final inspections of one- and two-family dwellings constructed under the **Oregon Residential Specialty Code** as provided in this rule.

(2) A certificate holder may conduct final inspections in residential dwellings and accessory structures of structural components and mechanical, plumbing, and electrical systems where the item inspected was previously inspected and approved, or where a previous inspection and approval is not required, and the item is otherwise ready for a final inspection, except:

- (a) Electrical systems with a service in excess of 400 amps;
- (b) Emergency and stand-by power generation equipment;
- (c) Solar photovoltaic installations; and
- (d) Swimming pools.

(3) Where a component or installation is sufficiently complex, a building official may limit the authority of a Specialized Finals Inspector to less than the scope contained in this rule.

Stat. Auth.: ORS 455.720, 455.730 & 455.735
Stats. Implemented: ORS 455.720, 455.730 & 455.735
Hist.: BCD 7-2012, f. 6-27-12, cert. ef. 7-1-12

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

Rule Caption: Biennial Adjustment to Securities Fees; Corrections to Regulatory References.

Adm. Order No.: FCS 1-2012

Filed with Sec. of State: 7-9-2012

Certified to be Effective: 7-9-12

Notice Publication Date: 5-1-2012

Rules Amended: 441-025-0050, 441-175-0002, 441-175-0010, 441-175-0060, 441-175-0070, 441-175-0080, 441-175-0100, 441-175-0105, 441-175-0120, 441-175-0130, 441-175-0150, 441-175-0160, 441-175-0165, 441-195-0020

Subject: These rules adjust the initial license fees for broker-dealer salespersons from \$55 to \$60, and the renewal license fee increases from \$50 to \$55 based on the statutory requirement to set fees in an amount that is equal as nearly as possible to the national midpoint for similar fees charged by all other United States state securities regulatory agencies. These rules also initially proposed to make certain technical, non-substantive corrections to administrative rules governing the licensing of securities broker-dealers, investment advisers, and salespersons. In the course of the public hearing process, additional opportunities to make technical, non-substantive corrections consistent with the rules as initially proposed were identified. Generally speaking, these rules update references to required forms already in rule, add citations to the US Code or to the Code of Federal Regulations as appropriate, ensure that new names for stock exchanges already addressed in existing rule are incorporated, and other technical corrections to meet drafting conventions.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-025-0050

Additional Exempt Employee Benefit Plans

Pursuant to ORS 59.025(14), securities issued in connection with an employee benefit plan are exempt from registration if the plan:

(1) Is subject to or voluntarily complies with Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1191c;

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(2) Meets the requirements of Section 403(b) of the Internal Revenue Code, 26 U.S.C. § 403(b); or

(3) Does not permit employee contributions.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025(15)

Hist.: CC 3, f. 10-2-69, ef. 10-25-69; Renumbered from 815-010-0010; CC 2-1978, f. 6-5-78, ef. 6-10-78; Renumbered from 815-030-0025; FCS 3-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 2-25-88; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0002

Fees for Licensing or Notice Filing of Firms and Individuals

Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the Director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$250;

(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$60 and a renewal license fee of \$55;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0010

Definitions

As used in these rules:

(1) "Associated person" shall mean any partner, officer, director, or branch manager of a broker-dealer, or investment adviser (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker-dealer, or investment adviser, including any employee of such broker-dealer or investment adviser, except that for the purposes of OAR 441-195-0010, 441-195-0070, 441-205-0140, and 441-205-0210, the term "associated person" shall not include persons whose functions are only clerical or ministerial.

(2) "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, a database maintained by the Financial Industry Regulatory Authority to register broker-dealers and salespersons.

(3) "The completion of the transaction" means:

(a) In the case of a customer who purchases a security through or from a broker-dealer except as provided in subsection (b) of this section, the time when such customer pays the broker-dealer any part of the purchase price, or if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(b) In the case of a customer who purchases a security through or from a broker-dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(c) In the case of a customer who sells a security through or to a broker-dealer except as provided in subsection (d) of this section, if the security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer and, if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer; and

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers the security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

(4) "Controlling security holder" means a person who exercises control as defined under ORS 59.015(2) or who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of an issuer.

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

(6)(a) "Financial Industry Regulatory Authority" or "FINRA" means the self-regulatory organization registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §730-3, to register and regulate broker-dealers and salespersons and approved by the SEC as a successor to the National Association of Securities Dealers, Inc.

(b) For purposes of ORS 59.025, 59.049, 59.065, 59.175, 59.331, and 59.370, references to the "National Association of Securities Dealers, Inc." or "NASD" shall refer to the Financial Industry Regulatory Authority or FINRA.

(7) "FINRA broker-dealer" means a broker-dealer subject to section 15 of the Securities Exchange Act of 1934, 15 U.S.C. §78o, as amended.

(8) "Form ADV" means the application for registration as an investment advisor under sections 203(c) or 203(g) of the Investment Advisors Act of 1940, 15 U.S.C. § 80b-3, as prescribed by 17 C.F.R. § 279.1, and available at <http://www.sec.gov/divisions/investment/iard/iastuff.shtml>.

(9) "Form BD" means the application for registration as a broker-dealer under the Securities Exchange Act of 1934, 17 U.S.C. §78a et seq., as prescribed by 17 C.F.R. § 249.501, and available at <http://www.sec.gov/about/forms/formbd.pdf>.

(10) "Form U-4" means the Uniform Application for Securities Industry Registration or Transfer, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>

(11) "Form U-5" means the Uniform Termination Notice for Securities Industry Registration, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>.

(12) "IARD" means the Investment Adviser Registration Depository maintained by the Financial Industry Regulatory Authority to register investment advisers and investment adviser representatives.

(13) "Independent accountant" means a certified public accountant (CPA) or public accountant (PA), who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(14)(a) "Interim financial statement" means a financial statement prepared at a time other than year end. Interim financial statements must be prepared at month end, may be prepared by management, and must include at least a balance sheet and statement of income or operations. (b) The Focus Report filed with the Securities and Exchange Commission, Form X-17A-5 as required by 17 C.F.R. § 240.17a-5 and available at <http://www.sec.gov/about/forms/secforms.htm>, is acceptable as an interim financial statement.

(15) "NASD" means the National Association of Securities Dealers, Inc., the self-regulatory organization previously registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §730-3, to register and regulate broker-dealers and salespersons and subsequently succeeded by the Financial Institution Regulatory Authority.

(16) "Non-FINRA broker-dealer" means a broker-dealer who is not a member of the Financial Industry Regulatory Authority.

(17) "S-3" means the Series 3 National Commodity Futures Examination published by the National Futures Association on May 2012 and made available at <http://www.nfa.futures.org/NFA-registration/study-outlines/SO-Series3.pdf>.

(18) "S-6" means the Series 6 Investment Company Products/Variable Contracts Limited Representative Qualifications Examination, published by FINRA in 2005 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(19) "S-7" means the Series 7 General Securities Representative Qualification Examination, published by FINRA in 2011 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(20) "S-22" means the Series 22 Direct Participation Programs Limited Representative Qualification Examination published by FINRA in 2007 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(21) "S-42" means the Series 42 Registered Options Representative Qualification Examination published by FINRA in 2007 and made available at <http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/RegisteredReps/Qualifications/p011096>.

(22) "S-52" means the Series 52 Municipal Securities Representative Qualification Examination published by the Municipal Securities Rulemaking Board in January 2011 and made available at <http://www.msrb.org/Rules-and-Interpretations/Professional-Qualification.aspx>.

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(23) "S-62" means the Series 62 Corporate Securities Qualification Examination published by FINRA in 2007 and made available at <http://www.finra.org/Industry/Compliance/Registration/Qualifications/Exams/RegisteredReps/Qualifications/p011096>.

(24) "S-63" means the Uniform Securities Agent State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(25) "S-65" means the Series 65 Uniform Investment Adviser Law Examination published by the North American Securities Administrators Association in 2010 and made available at <http://www.nasaa.org/industry-resources/exams/series-65-66-resources/series-65-study-guide/>.

(26) "S-66" means the Series 66 Uniform Combined State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(27) "SEC" means the United States Securities and Exchange Commission.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0161; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0065; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0060

Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Markets Improvement Act of 1996

(1) A FINRA broker dealer is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state as described in OAR 441-175-0080 or 441-175-0110.

(2)(a) A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 and 441-175-0110.

(b) A state investment adviser who has a principal place of business in a state other than this state and complies with that state's bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.

(c) An out-of-state state investment adviser that is not exempt under the "de minimis" exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.

(3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.

(4)(a) Notice filing by a federal covered investment adviser will be accepted by the director through IARD using a Form ADV and shall include the fee required by OAR 441-175-0002.

(b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the director through IARD and shall include the fee required under OAR 441-175-0002.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.165 & 59.285

Stats. Implemented: ORS 59.165

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0070

General Licensing Rules for Broker-Dealers, Investment Advisers and Salespersons

(1) Incomplete applications will not be processed.

(2) When all documents and fees have been submitted and reviewed by the director, a license for the broker-dealer or investment adviser, which may be conditioned or restricted pursuant to OAR 441-225-0030, shall be issued unless the director determines that licensing should be denied on one or more grounds set forth in ORS 59.205 to 59.225.

(3) Licensees conducting business under any name other than the name in which their license is issued by the director shall comply with OAR 441-175-0171.

(4) Licenses of non-FINRA broker-dealers or state investment advisers expire one year after the date of initial licensing, except licenses of state investment advisers which license through IARD will expire on December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0165.

(5) Licenses of FINRA broker-dealers expire December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0160.

(6) Any amendments to an application or license shall be filed in accordance with the provisions of OAR 441-175-0105.

(7)(a) If any person not licensed in the State of Oregon succeeds to the business and continues the business of a person licensed in Oregon, a new application must be filed. However, the license of the predecessor and predecessor salespersons or investment adviser representatives shall remain effective as the license of the successors for a period of 75 days after the succession, if a completed application is received by the director within 30 days of the succession. The salespersons or investment adviser representatives to the predecessor who were licensed in Oregon at the time of the acquisition will be licensed to the successor when the new license is issued. A new license will be issued reflecting the date of succession and a new effective date. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor;

(b) A Form BD or ADV filed by a person that is not licensed when such form is filed and which succeeds to and continues the business of a person licensed in this state shall be deemed an application for licensing filed by that predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form or organization, or change in composition of a partnership and the amendment is filed to reflect these changes.

(8) If a broker-dealer or state investment adviser who is licensed in the State of Oregon is acquired by another person licensed in the State of Oregon, there will be no additional licensing requirements. However, the acquiring party must submit an amended Form BD, or Form ADV pursuant to OAR 441-175-0105. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.165, 59.175(1), 59.205(2) & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.1; FCS 3-1989, f. & cert. ef. 2-1-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0080

Applications for Licensing of Broker-Dealers

(1) An applicant for licensing as a FINRA broker-dealer must submit to the FINRA/CRD:

(a) A completed Form BD;

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed Form U-4 pursuant to OAR 441-175-0130.

All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer; and

(d) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

(2) An applicant for licensing as a non-FINRA broker-dealer must submit to the director:

(a) A completed Form BD;

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed Form U-4 pursuant to OAR 441-175-0120.

All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer;

(d) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(e) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the director within 30 days following the change.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175, 59.195 & 59.285

Stats. Implemented: ORS 59.165, 59.175, 59.185, 59.195 & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.2; FCS 16-1988(Temp), f. & cert. ef. 11-21-88; FCS 5-1989, f. & cert. ef. 5-17-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

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Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser must apply through the IARD.

(2) An applicant must submit:

(a) To the IARD:

(A) A completed Form ADV, including Parts 1 and 2 of Form ADV;

(B) An investment adviser licensing fee as required by OAR 441-175-0002;

(C) At least one completed Form U-4. All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(D) A licensing fee for each investment adviser representative as required by OAR 441-175-0002.

(b) To the director:

(A) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(B) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the director within 30 days following the change;

(C) A copy of any proposed client contracts if the applicant is an Oregon based state investment adviser; and

(D) Any form or portion of any form which cannot be submitted through the IARD.

(3) An Oregon based investment adviser applicant who has custody or possession of a client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client must file with the director financial statements as defined in OAR 441-011-0040 and prepared by an "independent accountant" as defined in 441-175-0010(8) as follows:

(a) If the applicant has been in operation for more than two years, and the application is made less than 90 days after the end of the applicant's fiscal year, the applicant must provide financial statement for the two most recent fiscal years, not including the most recently completed fiscal year.

(b) If the applicant has been in operation for less than two years, the applicant must provide financial statements for the periods of operation.

(c) If the year-end financial statements are dated more than 90 days from the date of the completed application, the applicant must provide interim financial statements that were completed within 90 days of the application.

(4) All applicants must comply with the provisions of OAR 441-175-0070.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1) & 59.205(2)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0105

Material Changes, Amendments and Notice of Civil and Criminal Actions

(1) A broker-dealer or state investment adviser applicant or licensee must file an amendment to its application and a broker-dealer, state or federal covered investment adviser, must file an amendment to the application of their respective salespersons or investment adviser representatives if there is a material change to any information on the original application or previous amendments including:

(a) Bankruptcy;

(b) Civil or criminal actions described on the application;

(c) Disciplinary disclosure answers on the application;

(d) Change in or additional affiliated business entity name;

(e) Change in ownership other than as provided in OAR 441-175-0070(7);

(f) Change in form of organization;

(g) Change of address; or

(h) Change in scope of business.

(2) Amendments must be filed within 30 days of the occurrence of the material change. If a completed amendment cannot be filed within 30 days, the applicant or licensee shall file with the director within the 30 day limit a written notice containing available information, the reasons a complete amendment cannot be timely filed and a specific date on which the completed amendment will be filed.

(3) Amendments to the application shall be made on:

(a) A Form BD for broker-dealers;

(b) A Form ADV for state investment advisers; and

(c) A Form U-4 for salespersons or investment adviser representatives.

(4) Amendments to the application shall be filed with:

(A) The CRD for broker-dealers who are or will be members of the FINRA and their salespersons; except for changes in designated supervisor, which shall be filed with the director;

(b) The IARD for any investment advisers or investment adviser representatives who have previously filed applications through IARD; or

(c) The director for all other persons.

(5) Filing amendments to a salesperson or investment adviser representative application shall be the responsibility of both the salesperson or investment adviser representative and the employing broker-dealer, or state or federal covered investment adviser.

(6) There is no fee required in connection with an amendment filed pursuant to this rule.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175, 59.185 & 59.285

Stats. Implemented: ORS 59.175 & 59.185

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0120

Licensing of Salespersons or Representatives to Non-FINRA Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a FINRA broker-dealer, must be licensed as provided in this rule.

(2) A non-FINRA broker-dealer, an issuer, or an owner of securities must submit to the director a complete application to license a salesperson including:

(a) A completed Form U-4;

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations pursuant to section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking as provided in section (10) of this rule.

(3) A state or federal covered investment adviser must submit to the IARD, if the adviser files with the IARD and the IARD is capable of accepting the application, and otherwise to the director:

(a) A completed Form U-4;

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score on the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking as provided in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;

(b) Salespersons licensed to an issuer or owner of securities where the securities have been registered pursuant to ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(5) A salesperson to a non-FINRA broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements pursuant to section (4) of this rule is required to pass the S-63 with a minimum score of 70 percent. In addition, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-7 for a general securities license;

(b) S-3 for a commodity futures license;

(c) S-6 for an investment company, mutual funds or variable contracts license;

(d) S-22 for a limited partnership or tax shelter license;

(e) S-42 for an options license;

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(f) S-52 for a municipal bonds license; or

(g) S-62 for a corporate securities license.

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements pursuant to section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the S-7 examination, then either the S-65 examination if taken prior to January 1, 2000 or the S-66 examination if taken after January 1, 2000; or

(B) The S-65 examination if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

(F) Such other professional designation as the director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination, and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(9) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered investment adviser if all employers enter into an undertaking on a form approved by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salespersons or investment adviser representatives employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the director and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq, under common management or control; or

(B) The employer, a single entity, is licensed or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(C) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(11) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the director as provided in OAR 441-011-0020;

(b) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed pursuant to ORS 59.049(1) or 59.049(2), do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the director shall issue a license, which may be conditioned or restricted pursuant to OAR 441-225-0030, for the salesperson or investment adviser representative unless the director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the director as follows:

(a) The license of an issuers or owners salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0130

Licensing of Salespersons to FINRA Broker-Dealers

(1) For purposes of ORS 59.175, all FINRA salespersons will be eligible for automatic licensing as provided in this rule if:

(a) The salesperson is licensed by the FINRA to a broker-dealer who is a member in good standing of the FINRA;

(b) The salesperson is employed by a broker-dealer who is licensed in Oregon pursuant to ORS 59.175;

(c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;

(d) The salesperson has filed with the director an undertaking as required in section (8) of this rule, if applicable; and

(e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

(a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or

(b) Salespersons licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(4) A salesperson who is not exempt from the examination requirements pursuant to section (3) of this rule is required to pass the S-63 examination with a minimum score of 70 percent. In addition to the S-63 examination, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-7 for a general securities license;

(b) S-3 for a commodity futures license;

(c) S-6 for an investment company, mutual funds or variable contracts license;

(d) S-22 for a limited partnership or tax shelter license;

(e) S-42 for an options license;

(f) S-52 for a municipal bonds license; or

(g) S-62 for a corporate securities license.

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

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(6) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this State.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an undertaking on a form provided by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Securities Section of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the director and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(9) Unless disqualified for automatic licensing in Oregon pursuant to OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the director will either approve the application, condition or restrict the license pursuant to 441-225-0030, or deny it pursuant to ORS 59.205 to 59.225. If the director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS Chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with FINRA.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for an FINRA salesperson expires on December 31 of each year. The FINRA broker-dealer shall renew the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; Administrative correction 12-4-97; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0150

Termination or Cancellation of Salesperson or Investment Adviser Representative License

(1) A salesperson's or investment adviser representative's license with a broker-dealer, state or federal covered investment adviser, issuer or owner, ("employer"), may be terminated at any time by either the salesperson or investment adviser representative, or the employer.

(2) The employer shall provide the director and the terminated person with written notice of the termination on a Form U-5 within 30 days of the termination, accurately describing the reason for the termination pursuant to ORS 59.370(2), with notice to the director being provided as follows:

(a) If the employer is a FINRA broker-dealer, the notice shall be filed with the CRD;

(b) If the employer is a state or federal covered investment adviser and the investment adviser representative's application was filed through IARD, the notice shall be filed with IARD;

(c) All other employers shall file the notice with the director.

(3) The salesperson or investment adviser representative may provide the director and the former employer with written notice of the termination in any form at any time.

(4) The status of the license of a salesperson or investment adviser representative licensed pursuant to OAR chapter 441, division 175 is dependent upon the status of the employer. Therefore, without further action by the director:

(a) The suspension of the license or notice of the employer suspends the license of the salesperson or investment adviser representative, however, the end of suspension of the license or notice of the employer automatically reinstates the license of the salesperson or investment adviser representative;

(b) The revocation, cancellation, withdrawal or expiration of the license or notice of the employer cancels the license of the salesperson or investment adviser representative;

(c) The suspension of the registration of securities suspends the license of the salesperson licensed to the issuer or owner of the securities; and

(d) The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of the salesperson licensed to the issuer or owner of the securities.

(5) Pursuant to OAR 441-014-0060, the director may immediately suspend or refuse to renew a salesperson or investment adviser representative license, without prior opportunity for a hearing, upon a showing of a danger to the public health or safety; however, the affected party shall be entitled to a post-action hearing.

Stat. Auth.: ORS 59.175, 59.185, 59.285 & 59.370

Stats. Implemented: ORS 59.175, 59.185 & 59.225

Hist.: CC 6-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0073; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0160

Renewal of FINRA Broker-Dealer and Salesperson Licenses

(1) The licenses of a FINRA broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed pursuant to this rule.

(2) To renew a license, a FINRA broker-dealer must submit the following items to the FINRA/CRD:

(a) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(b) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.

(4) If a FINRA broker-dealer satisfies the director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the FINRA broker-dealer does complete the renewal application by January 31, the director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0165

Renewal of the Licenses of Non-FINRA Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives

(1) The licenses of a non-FINRA broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed pursuant to this rule. Provided, however, that any license of a state investment adviser or investment adviser representative who has filed an application through IARD will expire on December 31 of each year unless renewed through IARD.

(2) In order to prevent automatic expiration of an order of licensing or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of licensing or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(3) Incomplete applications will not be processed.

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(4) To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, pursuant to OAR 441-175-0105, which have not previously been submitted.

(5) To renew a license, a non-FINRA broker-dealer must submit the following items to the director:

(a) A non-FINRA broker-dealer renewal form;

(b) An amended Form BD or ADV, pursuant to OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the director;

(d) A salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (7) of this rule;

(f) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed, except as provided in section (7) of this rule; and

(6) If the applicant for renewal is an Oregon based state investment adviser, the renewal applicant must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined pursuant to OAR 441-175-0010(8);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined pursuant to OAR 441-175-0010(8); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(7) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

441-195-0020

Business Records by Broker-Dealers

(1) Every broker-dealer shall make and keep current the following books and records relating to its business:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(b) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such broker-dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts and all other debits and credits to such account;

(d) Ledgers (or other records) reflecting the following:

(A) Securities in transfer;

(B) Dividends and interest received;

(C) Securities borrowed and securities loaned;

(D) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and

(E) Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered and, in all cases, the name or designation of the account in which each position is carried;

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. Orders entered pursuant to the exercise of discretionary power by such broker-dealer, or any employee thereof, shall be so designated. The term "Instruction" shall include instructions between partners and employees of a broker-dealer. The term "Time of Entry" shall mean the time when such broker-dealer transmits the order or instruction for execution;

(g) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order and of any modification thereof, the account in which it was entered, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. An order with a customer other than a broker-dealer entered pursuant to the exercise of discretionary authority by the broker-dealer, or associated person thereof, shall be so designated;

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such broker-dealer;

(i) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account;

(j) A record of all puts, calls, spreads, straddles, and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved;

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date;

(l) A questionnaire or application for employment executed by each partner, officer, director, branch manager, or any employee, except any person associated with a broker-dealer whose functions are solely clerical or ministerial, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to such person:

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(A) The associated person's name, address, Social Security number, date of birth and the starting date of the associated person's employment or other association with the broker-dealer;

(B) A complete consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(C) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(D) A record of any denial, suspension, expulsion or revocation of membership, or registration of any broker-dealer with which the associated person was associated in any capacity when such action was taken;

(E) A record of any permanent or temporary injunction entered against the associated person or any broker-dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(F) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing;

(G) A record of any other name or names by which the associated person has been known or which the associated person has used; provided, however, that if such associated person has been registered as a registered representative of such broker-dealer, or the associated person's employment has been approved by, the Financial Industry Regulatory Authority, the American Stock Exchange LLC, the NASDAQ OMX BX, the Chicago Stock Exchange, Inc., the New York Stock Exchange, Inc., the NASDAQ OMX PHLX, LLC, the Chicago Board Options Exchange, Inc., the National Stock Exchange, Inc. or the International Securities Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of section (1) of this rule;

(m) Fingerprint records together with any information received from the United States Attorney General or its designee for every person required to be fingerprinted under the Securities Exchange Act of 1934;

(n) A record as to each associated person of each written customer complaint received by the broker-dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a broker-dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint;

(o) A record listing every associated person of the broker-dealer which shows, for each associated person, every office of the broker-dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the broker-dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the broker-dealer;

(p) A record as to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a broker-dealer may elect to produce the required information promptly upon request of the director;

(q) A record of all agreements pertaining to the relationship between each associated person and the broker-dealer including a summary of each associated person's compensation arrangement or plan with the broker-dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined;

(r) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the broker-dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the broker-dealer is a member that require advertisements, sales literature, or any other communications with

the public by a broker-dealer or its associated persons be approved by a principal;

(s) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records;

(t) A record listing each principal of the broker-dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the broker-dealer is a member that require acceptance or approval of a record by a principal.

(u) The following record regarding any internal broker-dealer system of which such broker-dealer is the sponsor:

(A) A record of the broker-dealer's customers that have access to the system (identifying any affiliations between such customers and the broker-dealer);

(B) Daily summaries of trading in the system, including securities for which transactions have been executed through use of such system and transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation); and

(C) Time-sequenced records of each transaction effected through the system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if the system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker-dealer sponsoring the system).

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(3) This rule shall not be deemed to require a broker-dealer to make or keep such records as are required by section (1) of this rule reflecting the sale of U.S. Tax Savings Notes, U.S. Defense Savings Stamps, or U.S. Defense Savings Bonds, Series E, F, and G.

(4) The records specified in section (1) of this rule shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(5) Every broker-dealer shall make and keep current, as to each office, the books and records described in subsections (1)(a), (1)(f), (1)(g), and (1)(l) through (1)(s) of this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-1 and 815-030-0085; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Requiring all new and renewal license applications and continuing education records to be filed electronically.

Adm. Order No.: ID 12-2012(Temp)

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 8-1-12 thru 1-25-13

Notice Publication Date:

Rules Amended: 836-071-0110, 836-071-0118, 836-071-0130, 836-071-0140, 836-071-0220, 836-071-0225, 836-071-0235, 836-071-0240, 836-071-0355, 836-071-0360, 836-071-0560, 836-071-0565, 836-072-0010, 836-075-0000, 836-075-0030

Subject: This rulemaking amends rules of the Department of Consumer and Business Services (DCBS) related to licensing and continuing education requirements. These temporary rules require electronic submission of license applications and continuing education materials to the extent possible. All fingerprints are to be submitted electronically from the exam vendor testing facilities, continuing education providers will be required to report course completion information electronically via instructions from the division and non-

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resident applicants must supply background information electronically.

These rules are necessary to reflect changes in the licensing process that result from DCBS's change to an electronic-based system.

Rules Coordinator: Sue Munson—(503) 947-7272

836-071-0110

Fingerprints

All applicants for a license shall furnish fingerprints required by the Director of the Department of Consumer and Business Services to the examination administrator who will perform the duties of obtaining electronically the fingerprints of applicants and submitting the fingerprints for Oregon or nationwide criminal history checks. The applicant shall submit the fingerprint card according to the requirements and instructions of the examination administrator.

Stat. Auth.: ORS 181.534, 705.135 & 731.244

Stats. Implemented: ORS 181.534, 705.141, 744.001 & 744.059

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 23-2010, f. 12-30-10, cert. ef. 1-1-11; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0118

Requirements That Must Be Completed Prior to Submitting Licensing Application

On and after August 1, 2012, all applicants for a license shall submit application materials electronically in accordance with directions provided on the website of the Insurance Division of the Department of Consumer and Business Services. Before submitting an application for a license for consideration by the Director, the applicant must complete the following steps in the application process:

- (1) Completion of all pre-examination training and experience requirements under OAR 836-071-0180;
- (2) Submission of fingerprints in accordance with OAR 836-071-0110;
- (3) Satisfactory passage of a licensing examination under OAR 836-071-120 and 836-071-0127; and
- (4) Completion of a criminal history check as set forth in OAR 836-072-0001.

Stat. Auth.: ORS 731.244, 731.804, 744.001, 744.003, 744.058, 744.535, 744.619 & 744.621

Stats. Implemented: ORS 744.001, 744.003, 744.058, 744.535, 744.619 & 744.621

Hist.: ID 23-2010, f. 12-30-10, cert. ef. 1-1-11; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0130

Adjuster or Insurance Consultant License Renewal

(1) The adjuster or insurance consultant license of an individual expires biennially in the month of the individual's birthday anniversary. The adjuster or insurance consultant license of a person other than an individual expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the license of a person other than an individual shall expire on the second anniversary following each renewal.

(2) Not later than the license expiration date, an adjuster or insurance consultant licensee applying for renewal must submit electronically in the form and according to directions set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov the following, as applicable:

- (a) A completed renewal application;
- (b) The renewal fee;
- (c) A statement of current license status from the insurance department of the state of residence of the licensee, if the licensee is a non-resident licensee; and
- (d) Evidence of current Federal Crop Insurance Corporation certification, if the applicant is a crop insurance adjuster.

(3) The Director may allow an adjuster or insurance consultant licensee not more than 30 days to submit missing information on the application form if the fees have been submitted on or before the expiration date.

(4) The Director may request on the renewal application any information requested on the original application for a license.

Stat. Auth.: ORS 731.244 & 744.007

Stats. Implemented: ORS 744.007

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 9-2002, f. & cert. ef. 3-18-02; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0140

License Amendment

An applicant for an amendment to an adjuster or insurance consultant license shall apply electronically in the manner provided for application for the initial license under ORS 744.001.

Stat. Auth.: ORS 731.244, 731.804, 744.001, 744.003, 744.535, 744.619 & 744.621

Stats. Implemented: ORS 744.001, 744.003, 744.535, 744.619 & 744.621

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 9-2002, f. & cert. ef. 3-18-02; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0220

Continuing Education; Documentation

(1) For the purpose of furnishing evidence of completion of a course for which an insurance producer claims credit, documentation applicable to the course shall be submitted as follows:

(a) For a registered course taken for academic credit, to the extent possible, the institution offering the course shall submit electronically a transcript, certificate of completion or grade or course completion report, whichever is issued by the institution offering the course, or a copy thereof. If it is not possible for the institution offering the course to submit a transcript, certificate of completion or grade or course completion report, the insurance producer shall submit the transcript, certificate of completion or grade or course completion report in accordance with directions provided on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. For purposes of this subsection, a course is taken for academic credit if it is offered by a community college or four-year college or university, and the insurance producer is given academic credit for the course by such an institution;

(b) For coursework taken for the purpose of obtaining a nationally-recognized insurance industry designation, to the extent possible the entity granting the designation shall submit electronically directly to the Insurance Division, a transcript, certificate of completion or grade or course completion report, whichever is issued by the entity granting the designation;

(c) For a registered course that is not offered for academic credit, the provider shall submit to the department electronically the certificate of completion issued by the provider, or a copy thereof. The certificate must include a statement of the hours of credit, the name of the insurance producer, the date of the course, the course registration number, the authorized signature of the provider and the title of the course. The authorized signature may be made by rubber stamp or other facsimile if the stamped or facsimile signature is in a contrasting color to the print of the certificate;

(d) For a course that is not offered for academic credit and is not registered when taken by an insurance producer, an insurance producer must comply with the requirements of OAR 836-071-0250.

(2) An insurance producer for whom documentation required under this rule is submitted must submit the original document upon request by the Director for the purpose of verification.

(3) The Director may accept evidence of completion of a course from continuing education providers through electronic means as specified by the Director.

Stat. Auth.: ORS 731.244 & 744.072

Stats. Implemented: ORS 744.072

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 4-2007, f. 3-6-07, cert. ef. 1-1-08; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0225

Continuing Education; Standards for Granting Credit Hours

(1) Subject to the subject matter requirements of OAR 836-071-0230, an insurance producer may receive credit for continuing education for a course taken for academic credit, for a course registered under 836-071-0240 or a course certified under 836-071-0250:

- (a) For not more than the credit hours authorized by the Director;
- (b) Only if an hour includes at least 50 minutes of instruction or study;
- (c) For class hours in which an insurance producer is an instructor of a course if the course meets the continuing education requirements of an insurance producer attending it. Credit may be taken by an insurance producer with respect to a course only once in each renewal period in which the insurance producer instructs the course;
- (d) For not more than eight credit hours in any given day;
- (e) Only if the hour for which credit is taken was completed during the license period immediately preceding the renewal date;
- (f) For a course taken through independent study, but only as provided in section (4) of this rule.

(2) An insurance producer may take credit for a course only if the insurance producer has successfully completed the course before the insurance producer applies for renewal or reinstatement. For the purpose of tak-

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ing credit for a course other than one taken through independent study, an insurance producer successfully completes the course if the insurance producer is present for the full approved time and has signed in and out on the attendance register for the course.

(3) An insurance producer may not take continuing education credit for:

(a) Hours devoted to preparation for a course; when the insurance producer is acting as an instructor for the course;

(b) Travel time;

(c) Time exceeding the actual class time;

(d) Unplanned or incidental learning experiences;

(e) Any course not completed;

(f) Any course repeated within a two year period; or

(g) Any course during which the insurance producer is absent more than 5 minutes for each hour of credit granted, or is absent more than 20 minutes from the course as a whole.

(4) For purposes of subsection (1)(f) of this rule, a course is taken through independent study if the course is designed to allow each student to take the course at the student's own pace on an individual basis. An insurance producer may claim credit for an independent study course if the provider and the course are both registered with the Director when the course is taken, if the insurance producer passes an examination by a score of 70 percent or higher and if the proctor of the examination affirms and the provider certifies completion and passage as provided in this section. If the independent study course is a textbook, the examination must be conducted as a closed book examination. The examination for an independent study course need not be proctored if the course is computerized and includes safeguards ensuring that the insurance producer cannot review the study material while taking the examination and if the examination has safeguards ensuring that the insurance producer cannot change answers after completing the examination. Proctor affirmation and provider certification shall be made as follows:

(a) The proctor must submit materials electronically that affirm by affidavit, on an affidavit form approved by the Director, that the insurance producer took the examination for the course without assistance from the textbook or from any person. The proctor must disclose in the affidavit the proctor's name, address, telephone number and the proctor's position or connection with the insurance producer, such as a continuing education school or a librarian, and the proctor's registration number, if the proctor is required to be registered under section (7) of this rule. The provider must retain the affidavit with the examination. A proctor affidavit is not required if the independent study course is taken from a provider that offers a nationally recognized insurance industry designation.

(b) If the provider determines that the insurance producer completed and passed the examination, the provider may issue the certificate of completion. The provider shall date the certificate according to the date on which the provider received the examination for grading, state on the certificate that to the best of the provider's knowledge the insurance producer passed the examination and submit the certificate electronically to the Insurance Division in accordance with directions provided on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(5) The provider of a course shall issue a certificate of completion of the course to each qualifying insurance producer not later than the 15th day after the date on which an insurance producer completes a course or not later than the 15th day after the date on which the Director approved the course, whichever date is later. The period for issuance of a certificate does not apply to a provider who discloses to the insurance producer in writing, when the insurance producer pays for or registers for the class, the date by which or the time period within which the certificate will be issued.

(6) A provider shall notify the Director immediately of any change in authorized signers for certificates.

(7) A person may act as a proctor for one or more independent study courses under section (4) of this rule only if the person is registered as a proctor with the Insurance Division. A person applying for registration must submit the name, address and telephone number of the person; the location or locations at which examinations will be proctored; the fee or fees that will be charged, if any, for the proctoring service; and whether the person will proctor examinations for the general insurance producer population. There is no registration fee. If the person will proctor independent study course examinations for other than the general insurance producer population, the person must specify for whom the proctoring will be done. The registration requirement under this section does not apply to city, county and state public libraries, state colleges and universities, private colleges and universities other than those that are owned by or operated primarily for

the insurance industry, law offices or currently licensed certified public accountants.

Stat. Auth.: ORS 731.244 & 744.119

Stats. Implemented: ORS 744.119

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 4-1997, f. 4-25-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0235

Provider Registration

(1) A provider of continuing education courses must register with the Director in order to register courses under OAR 836-071-0240. A provider must register electronically on a form provided by the Director. The registration of a provider shall include the provider's business name, main business address, all addresses in this state at which courses are conducted, the business telephone number and the name of a contact person. If a provider is a firm or corporation or a trade association, registration shall also include the names of all principal officers.

(2) A provider shall notify the Director of any change in the address, telephone number or contact person of the provider within 30 days after any such change takes effect.

(3) Subject to revocation of registration under OAR 836-071-0245, a provider registration expires on the second January 1 following the date of registration.

(4) A provider is subject to rejection of registration by the Director if the provider fails to meet any requirement of OAR 836-071-0215 to 836-071-0250 applicable to the provider or to courses offered by the provider, or if any of its employees or contractors who supervise or conduct and certify completion of a course:

(a) Has a history of noncompliance with insurance statutes or rules; or

(b) Has had an insurance producer license or other insurance license revoked, suspended or refused because of violations of or noncompliance with insurance statutes or rules.

Stat. Auth.: ORS 731.244 & 744.119

Stats. Implemented: ORS 744.119

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0240

Course Registration

(1) A provider registered under OAR 836-071-0235 shall apply to the Director for registration of each course to be offered by the provider for continuing education credit. Application for registration shall be made electronically on a form provided by the Director and shall include the name of the provider, the provider's registration number assigned by the Department, the course title and credit hours suggested by the provider for the course, and if known, the date, time and location of meetings of each course for which application is made. The provider shall include the course outline with the registration application and shall submit any other information requested by the Director. The course outline must show instruction in 50-minute periods.

(2) In order to ensure that a course is eligible to be registered prior to the date of the first meeting of the course, a registered provider must apply for registration of the course not later than the 60th day preceding the first date.

(3) The registration of a course expires on the last day of the 24th month after the date the course is registered unless the course is renewed prior to the date on which registration expires. The provider must apply for renewal of a course not later than the 21st day prior to the date on which registration expires. If the Director determines that the course materials submitted with the renewal application are sufficiently changed or otherwise so different that the course as a whole should be treated as a new course rather than renewed, the course and its materials shall be reviewed according to the review period established in section (2) of this rule.

(4) Each course registration application is subject to review by the Director for the purpose of evaluating and assigning credit hours and determining compliance with requirements of course content under OAR 836-071-0230. The Director may reject a course for registration or terminate a course's registration if the Director determines that the course does not so comply.

(5) A registered provider shall resubmit a registered course for review and approval whenever the provider substantially changes the content of the course as registered.

(6) A provider shall notify the Director immediately of a cancellation or a change of date, time or location of a scheduled class.

(7) A course registration application that is submitted after the 60th day before the date of the first meeting of the course is subject to approval or disapproval after the date of the first meeting. If the Director approves an

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application for registration of a course that is submitted after the 60th day before the date of the first meeting of the course and before the tenth day prior to the date of that meeting, and if the provider gives notice of the course meeting as required by OAR 836-071-0247, the provider may grant credit for the course retroactively.

(8) A provider domiciled in another state that is a member of the Midwest Zone Continuing Education Reciprocity Agreement may offer in this state a course that is registered in its domiciliary state if the provider registers the course as provided in this rule. Such a course qualifies for registration if the Director determines that the subject matter of the course is not disqualified for credit under OAR 836-071-0230(2). A course to which this section applies is subject to renewal of its registration and the provider and the course are subject to the other provisions of this rule.

(9) All materials required under this rule shall be submitted electronically in accordance with directions of the director set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov

Stat. Auth.: ORS 731.244, 744.119 & Sec. 12, Enrolled SB 268 (2001)
Stats. Implemented: ORS 744.008, 744.119 & Sec. 12, Enrolled SB 268 (2001)
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 19-1998, f. & cert. ef. 12-2-98; ID 10-2001, f. & cert. ef. 9-11-01; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0355

Limited License Application, Rental Companies; Required Information

(1) On and after October 1, 2000, a rental company must hold a limited license in order to transact insurance as authorized by ORS 744.854. An applicant for a limited license as a rental company as authorized by 744.854 shall apply for a limited license to the Director of the Department of Consumer and Business Services electronically on a form established by the Director in accordance with directions set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. The applicant shall include the following information in the application:

(a) The applicant's corporate, firm or other business entity name, the business address and telephone number of the principal place of business and the business address and telephone number of each additional location at which the applicant will transact business under the license;

(b) All assumed business names and other names under which the applicant will engage in business under the license;

(c) The names of all officers and directors or partners, or the sole proprietor or the owners if the applicant is other than a corporation or a partnership, and the name of the executive designated as the statewide filing officer as required by ORS 744.856;

(d) Whether any of the following has occurred with respect to an officer or director of the applicant, or a partner, or the sole proprietor or any of the owners if the applicant is other than a corporation or a partnership:

(A) Conviction of or indictment for a crime, including a felony involving dishonesty or a breach of trust to which 18 U.S.C. sec. 1033 applies;

(B) A judgment entered against the officer, director, partner, sole proprietor or owner if the applicant is other than a corporation or a partnership, for fraud;

(C) A claim of indebtedness by an insurer or agent, and the details of any such indebtedness; or

(D) Refusal, revocation or suspension of any license to act in any occupational or professional capacity in this or any other state;

(e) All states and provinces of Canada in which the applicant or an officer, director or partner of the applicant, or a sole proprietor or owner if the applicant is other than a corporation or a partnership, currently holds a license to engage in the transaction of insurance, or has held such a license within ten years prior to the date of the application;

(f) Whether any firm or corporation of which an officer, director or partner of the applicant, or the sole proprietor or an owner if the applicant is other than a corporation or a partnership, is or has been an officer, director, partner, sole proprietor or owner has ever filed for bankruptcy or been adjudged a bankrupt; and

(g) Any other information requested by the Director in the license application form.

(2) The applicant shall include with the application the following:

(a) The course of study to be used by the applicant for the training program for employees concerning the kinds of coverage offered under the license;

(b) A certification by the applicant that all employees to be involved in the sale or offer of coverage to members of the public have completed or

will complete the training program prior to conducting the sales or offers; and

(c) A certification by the applicant that all employees to be involved in the sale or offer of coverage to members of the public will receive continuing education on a regular basis concerning the topics covered in the training program.

(d) A copy of the insurance sales material to be made available to renters of vehicles through the licensee.

(3) Each application shall be accompanied by a \$200 fee.

(4) During the review of an application, the Director may require any other information that the Director determines will assist consideration of the application.

Stat. Auth.: ORS 731.244, 731.804, 744.852 & 744.858
Stats. Implemented: ORS 731.804, 744.852, 744.856 & 744.858
Hist.: ID 8-2000, f. & cert. ef. 7-24-00; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0360

License Renewal

(1) A limited license expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the limited license shall expire on the second anniversary following each renewal.

(2) Not later than the license expiration date, a limited licensee applying for renewal must submit the following electronically as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov, as applicable:

(a) A completed renewal application, on a form provided by the Director;

(b) A copy of the insurance sales material made available to renters of vehicles through the limited licensee.

(c) A renewal fee of \$200.

(3) The Director may allow a limited licensee not more than 30 days to submit missing information on the application form if the fees, course of study and certifications have been submitted on or before the expiration date.

(4) The Director may request on the renewal application any information requested on the original application for a limited license.

(5) An expired license may be renewed according to the requirements and procedures in ORS 744.009, except that the person renewing an expired license must pay \$50 instead of twice the amount of the renewal fee.

Stat. Auth.: ORS 731.804 & 744.858
Stats. Implemented: ORS 731.804 & 744.856
Hist.: ID 8-2000, f. & cert. ef. 7-24-00; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0560

Limited License Application, Portable Electronics Insurance Coverage; Required Information

(1) An applicant for a portable electronics limited license shall submit electronically to the Director of the Department of Consumer and Business Services a portable electronics limited license application on the form entitled "Portable Electronics Insurance Vendor." The form is set forth on the Insurance Division Web site of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(2) In addition to the requirements in ORS 646A.577(2)(b) the applicant shall include all of the following information in the limited license application:

(a) The applicant's corporate, firm or other business entity name, the business address, e-mail address and telephone number of the principal place of business and the business address and telephone number of each additional location at which the applicant will transact business under the limited license.

(b) All assumed business names and other names under which the applicant will engage in business under the limited license.

(c) Whether any of the following has occurred with respect to the applicant or the employee, agent or authorized representative of the applicant that the applicant is designating as being responsible for the applicant's compliance with ORS 646A.575 to 646A.592:

(A) Conviction of or indictment for a crime, including a felony involving dishonesty or a breach of trust to which 18 U.S.C. sec. 1033 applies;

(B) A judgment entered against the applicant or person designated by the applicant as being responsible for the applicant's compliance with ORS 646A.575 to 646A.592, for fraud;

(C) A claim of indebtedness by an insurer or agent, and the details of any such indebtedness; or

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Hist.: ID 22-2011, f. 12-16-11, cert. ef. 1-1-12; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

(D) Refusal, revocation or suspension of any license to act in any occupational or professional capacity in this or any other state.

(d) All states and provinces of Canada in which the applicant currently holds a license to engage in the transaction of insurance, or has held such a license within ten years prior to the date of the application.

(e) Whether the applicant has ever filed for bankruptcy or been adjudged a bankrupt.

(f) The syllabus for the training program that is developed by the insurer or supervising entity that issued the portable electronics insurance policy to the limited licensee.

(g) A certification by the supervising entity or the applicant that all employees, agents and authorized representatives to be involved in the issuance, sale or offering for sale of portable electronics insurance coverage to customers have completed or will complete the training program under ORS 646A.585 (1)(b), prior to issuing, selling or offering for sale portable electronics insurance coverage.

(h) A certification by the supervising entity or the applicant that a copy of all written disclosure materials, as required under ORS 646A.582, that are currently being made available to prospective customers of portable electronics or have been made available to prospective customers in the past, shall be maintained by the supervising entity or the applicant. This information shall be maintained by the supervising entity or the applicant for a period of seven years and must be provided to the Director, upon request, within 21 calendar days.

(i) Any other information requested by the Director in the license application form.

(3) Each application shall be accompanied by a \$200 fee.

(4) During the review of an application, the Director may require any other information that the Director determines will assist consideration of the application.

Stat. Auth.: Ch. 393 § 7, OL 2011 & ORS 705.135

Stats. Implemented: Ch. 393 §§ 1 to 7, OL 2011

Hist.: ID 22-2011, f. 12-16-11, cert. ef. 1-1-12; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-071-0565

Limited License Renewal

(1) A limited license expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the limited license shall expire on the second anniversary following each renewal.

(2) A limited licensee applying for renewal must submit the following to the Director electronically as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov:

(a) A completed renewal application on the form entitled "Renewal Notice for Portable Electronics Insurance Vendors." The renewal application must be returned to the director electronically in accordance with instructions set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov not later than the limited license expiration date.

(b) An updated certification by the supervising entity or the limited licensee that all employees, agents and authorized representatives to be involved in the issuance, sale or offering for sale of portable electronics insurance coverage to customers have completed or will complete the training program under ORS 646A.585 (1)(b), prior to issuing, selling or offering for sale portable electronics insurance coverage.

(c) An updated certification by the supervising entity or the limited licensee that a copy of all written disclosure materials, as required under ORS 646A.582, that are currently being made available to prospective customers of portable electronics or have been made available to prospective customers in the past, shall be maintained by the supervising entity or the applicant. This information shall be maintained by the supervising entity or the applicant for a period of seven years and must be provided to the Director, upon request, within 21 calendar days.

(d) A renewal fee of \$200.

(3) The Director may allow a limited licensee not more than 30 days after the limited license expiration date to submit missing information on the renewal application form if the renewal application, fees, certification and disclosure materials have been submitted on or before the expiration date.

(4) The Director may request on the renewal application any information requested on the original application for a limited license.

(5) An expired limited license may be renewed up to one year after the limited license expiration date. The fee to renew an expired limited license is \$250.

Stat. Auth.: Ch. 393 § 7, OL 2011 & ORS 705.135

Stats. Implemented: Ch. 393 §§ 1 to 7, OL 2011

836-072-0010

Criminal Records Check Process

(1) An authorized designee:

(a) Shall conduct a LEADS-based criminal history check and request that the Oregon Department of State Police conduct a criminal records check for all applicants for an initial license; and

(b) May conduct a LEADS-based criminal history check, or request that the Oregon Department of State Police conduct, a criminal records check of an applicant for renewal of a license to whom OAR 836-072-0001 to 836-072-0045 apply.

(2) An applicant to whom OAR 836-072-0001 to 836-072-0045 apply must provide identifying information requested by the DCBS Criminal Records Request form and fingerprint card, which includes but is not limited to name, birth date, Social Security number, physical characteristics, driver's license or identification card number and current address, and information about prior residences as requested in the DCBS Criminal Records Request form. The applicant shall submit the information and obtain the fingerprints in accordance with directions provided by the Department. An applicant, with the written consent of the authorized designee, may submit the materials necessary for the authorized designee to conduct a LEADS-based criminal history check or a criminal records check up to six months before the applicant intends to submit an application for a new license or for renewal of an existing license.

(3) If the Department and a vendor agree by contract that the vendor will perform duties of obtaining fingerprints of applicants and submitting the fingerprints for Oregon or nationwide criminal history checks, an applicant shall submit the fingerprint card according to the requirements and instructions of the vendor.

(4) Within a reasonable period of time established by an authorized designee, an applicant shall disclose additional information as requested by the Department to resolve an issue hindering the completion of either a LEADS-based criminal history check or a criminal records check, such as providing additional proof of identity.

(5) When an authorized designee determines under section (1) of this rule that a criminal records check is needed:

(a) The authorized designee shall conduct a LEADS-based criminal records check as part of any fitness determination conducted in regard to an applicant.

(b) The authorized designee may request that the Oregon Department of State Police conduct an Oregon criminal history check when:

(A) The authorized designee determines that an Oregon criminal history check is warranted after review of the information provided by the applicant, the results of a LEADS-based criminal history check or other criminal records information;

(B) The authorized designee requests a nationwide criminal history check; or

(C) Upon application for renewal, the Director has reason to believe an additional check is necessary based on information obtained by the Insurance Division.

(6) An authorized designee may request that the Oregon Department of State Police conduct a nationwide criminal history check when:

(a) An applicant for license issuance has lived outside Oregon continuously for nine years;

(b) An applicant for resident license renewal has lived outside Oregon for 60 or more consecutive days during the previous three years;

(c) For a renewal application, the Director has reason to believe an additional check is necessary based on information obtained by the Insurance Division;

(d) Information provided by the applicant or the results of a LEADS-based criminal history check or Oregon criminal history check gives reason to believe, as determined by an authorized designee, that the applicant has a criminal history outside of Oregon;

(e) As determined by an authorized designee, there is reason to question the identity of, or information provided by, an applicant, including but not limited to failure to disclose a Social Security Number, disclosure of a Social Security Number that appears to be invalid or lack of an Oregon driver's license or identification card; or

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

Stat. Auth.: ORS 181.534, 705.135, 731.244

Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, 744.326

Hist.: ID 19-2008, f. & cert. ef. 12-10-08; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

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836-075-0000

Third Party Administrators; License Application; Required Information

An applicant for a third party administrator license shall provide the following electronically in accordance with directions set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov:

(1) Information relating to the organizational form of the applicant as follows:

(a) The name under which the applicant will transact business as a third party administrator;

(b) The principal place of business at which the applicant will transact business as a third party administrator, including the street and mailing addresses and telephone number;

(c) The organizational form of the applicant (corporation, partnership, sole proprietorship);

(d) All assumed business names and other names under which the applicant will transact business as a third party administrator;

(e) Whether the applicant has ever had a judgment entered against the applicant for fraud, and whether any insurer, insurance producer or other person claims the applicant to be indebted to it, together with the details of any such indebtedness;

(f) Whether any license of the applicant to act in any occupational or professional capacity has ever been refused, revoked or suspended in this or any other state, and whether the applicant has otherwise ever been the subject of a complaint to a professional licensing board or agency. If the applicant's answer is affirmative in any respect, the applicant must also provide the name and address of the licensing board or agency, the date of the complaint or the action taken against the license, a description of the nature of the complaint or the reason for the action taken against the license, and, with regard to a complaint, a description of the licensing board or agency's disposition of the complaint;

(g) Whether the applicant has ever filed for bankruptcy or been adjudged a bankrupt;

(h) All states and provinces of Canada in which the applicant currently holds a license or certificate of authority to transact business as a third party administrator, or has held such a license or certificate within ten years prior to the date of the application;

(i) The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of affairs of the administrator, including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership or association; shareholders holding directly or indirectly ten percent or more of the voting securities of the administrator; and any other person who exercises control or influence over the affairs of the administrator;

(j) The name and telephone number of a contact person who is knowledgeable about preparation of the annual financial statements or reports required under section (4) of this rule.

(2) An appointment of the Director, on the application, as agent for service of process, if the third party administrator will be a nonresident licensee.

(3) Biographical information for each owner, partner, director and officer of the applicant, on the Biographical Affidavit form designed by the National Association of Insurance Commissioners.

(4) The following documents, which must accompany the application under section (1) of this rule:

(a) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, share-holder agreement and other applicable documents and all amendments to such documents;

(b) The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

(c) Annual financial statements or reports for the two most recent years, which prove that the applicant is solvent, and such information as the Director may require in order to review the current financial condition of the applicant, except as provided in subsection (d) of this section;

(d) If the applicant is a corporation that is newly formed for the purpose of transacting business as a third party administrator, the financial statements or reports of each incorporator, shareholder and officer for the two most recent years, a current balance sheet for the corporation and such information as the Director may require in order to review the current financial condition of the applicant;

(e) A statement describing the business plan, including information on staffing levels and activities proposed in this state and nationwide. The plan must provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, recordkeeping and underwriting;

(f) Evidence that the applicant has a fiduciary account established in a federally or state-insured financial institution. An applicant that is an insurance producer licensed under ORS chapter 744 need not comply with this subsection if the applicant is in compliance with ORS 744.225 with respect to the premiums, charges and return premiums referred to in ORS 744.730;

(g) Evidence of insurance coverage required by ORS 744.726;

(h) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an insurance producer licensed by the Director for solicitation and taking of applications. Any applicant that intends directly to solicit insurance contracts or to otherwise act as an insurance producer must provide proof that it has a license as an insurance producer in this state.

Stat. Auth.: ORS 731.244, 744.303, 744.635, 744.704, 744.706, 744.712, 744.726

Stats. Implemented: ORS 744.706

Hist.: ID 1-1992, f. & cert. ef. 1-27-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

836-075-0030

Third Party Administrator License Renewal

(1) A third party administrator applying for renewal of the license must do the following, as applicable:

(a) Not later than the license expiration date, submit electronically a completed renewal application in accordance with directions set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(b) Submit the renewal fee.

(2) The Director may allow a third party administrator not more than 30 days to submit missing information on the renewal application form, if the fees have been submitted on or before the expiration date.

(3) The Director may require on the renewal application any information required with regard to an original application for a license.

Stat. Auth.: ORS 731.244, 744.303, 744.635, 744.704, 744.706, 744.712 & 744.726

Stats. Implemented: ORS 744.712(3)

Hist.: ID 1-1992, f. & cert. ef. 1-27-92; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12

Department of Corrections Chapter 291

Rule Caption: Evidence-Based Programs in Community Corrections.

Adm. Order No.: DOC 7-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12

Notice Publication Date: 1-1-2012

Rules Adopted: 291-031-0300, 291-031-0310, 291-031-0320, 291-031-0330, 291-031-0340, 291-031-0350, 291-031-0360

Subject: These rules establish a process for the department to determine if community-based programs, which the agency expends state funds, meet the principles of evidence-based programs.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-031-0300

Purpose, Policy, and Applicability

(1) Purpose: These rules establish a process by which the Department of Corrections determines if community-based programs, on which the agency expends state funds, meet the principles of evidence-based practices.

(2) Policy: It is the policy of the Department of Corrections that state funds received for community-based programs are expended on programs that incorporate significant and relevant practices based on scientifically based research and are cost effective.

(3) Applicability: These rules apply to community based treatment or intervention programs or services that receive state funds and are intended to reduce the likelihood that an individual will commit a crime.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075

Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

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291-031-0310

Definitions for OAR 291-031-0300 through 291-031-0360

(1) Cost Effective: Cost savings realized over a reasonable period of time are greater than costs.

(2) Evidence-Based Program: A program that incorporates significant and relevant practices based on scientifically based research and is cost effective.

(3) Program: A community-based treatment or intervention program or service that is intended to reduce the likelihood that an individual will commit a crime.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

291-031-0320

Program Evaluation

(1) The Department of Corrections shall identify and implement the use of a recognized and validated tool to evaluate programs to measure their fidelity to the principles of evidence-based practices.

(2) Programs that receive less than \$5,000 in state funds in a biennium, pursuant to the Community Corrections Act (ORS 423.020), shall not be subject to program evaluation as described in this rule.

(3) After a program has been evaluated using the tool described in subsection (1) of this rule, and it has been determined that the program incorporates significant and relevant practices based on scientifically based research and is cost effective, the program shall be re-evaluated at a minimum of every five years or as circumstances dictate.

(4) After a program has been evaluated using the tool described in subsection (1) of this rule, and it has been determined that the program does not incorporate significant and relevant practices based on scientifically based research and is not cost effective, the program shall be re-evaluated at a minimum of every 18-months until such time the program meets these criteria or state funds are no longer received by the program.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

291-031-0330

Program Non-Compliance

(1) Following an initial evaluation of a program as described in OAR 291-031-0320(4), the Department of Corrections shall provide a detailed report of their findings to the local community corrections director and to the program's executive director.

(2) The report shall include a set of recommendations to assist the program in the process of successfully incorporating the principles of evidence-based practices into their service delivery.

(3) The Department of Corrections shall meet with the local community corrections director or designee and the program executive director or designee to review the recommendations and offer technical assistance in implementation of the recommendations.

(4) The Department of Corrections shall conduct a subsequent program evaluation within the next 18 months.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

291-031-0340

Continued Program Non-Compliance

(1) Following a second evaluation of a program in which the program was evaluated with results as described in OAR 291-031-0320(4), the Department of Corrections shall provide a detailed report of their findings to the local community corrections director and to the program's executive director.

(2) The report shall include an assessment of progress or lack of progress in incorporating the principles of evidence-based practices as recommended in the initial evaluation report.

(3) The report shall also include a set of recommendations to assist the program in the process of successfully incorporating the principles of evidence-based practices into their service delivery.

(4) The Department of Corrections shall meet with the local community corrections director or designee and the program executive director or designee to discuss the level of progress or lack of progress in incorporating the principles of evidence-based practices as recommended in the initial evaluation report and identify any barriers that may exist.

(5) A formal written action plan shall be prepared by the local community corrections director or designee within 90 days of the receipt of the final report as described in subsection (1) of this rule, which incorporates

the report's recommendations; specific steps to incorporate the recommendations; and specific timeframes for implementation.

(6) The Department of Corrections shall conduct a subsequent program evaluation within the next 18 months.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

291-031-0350

Termination of Funding

(1) Following a third evaluation of a program in which the program was evaluated with results as described in OAR 291-031-0320(4), the Department of Corrections shall provide a detailed report of their findings to the local community corrections director and to the program's executive director.

(2) State funds shall not be allocated to a program that has been evaluated as unsatisfactory as described in OAR 291-031-0320(4) in three consecutive evaluations.

(3) Upon receipt of the final report, the local community corrections director shall advise the program's executive director that state funds will no longer be allocated to the program to provide services. The local community corrections director shall take the necessary steps to terminate the service contract, if any, with the program; or alternately, the local community corrections director may choose to fund the program with local resources.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

291-031-0360

Appeal Process

(1) A county may appeal the termination of funding as described in OAR 291-031-0350 by submitting reasons for which they believe the termination of funding is not warranted, based upon one or more of the criteria listed in subsection (3) of this rule. The appeal must be submitted in writing to the Department of Corrections.

(2) After state funds have been withdrawn from a program, the program may be reconsidered for state funding upon a finding that they have incorporated significant and relevant practices based on scientifically based research and is cost effective.

(a) In order to be reconsidered, the program shall submit in writing to the Department of Corrections the steps they have taken to incorporate the principles of evidence based practices.

(b) The Department of Correction shall determine whether significant changes have been made to merit a program evaluation as described in OAR 291-031-0320.

(3) Criteria which may be considered in the appeal process:

(a) Scientific basis for the program design and evidence that the program is delivered consistent with research; or,

(b) Outcome study; or,

(c) Demonstrated cost-effectiveness; or,

(d) The program is a single source provider and there are no reasonable alternatives available to provide that service within the county.

(4) Any decision of the Department of Corrections shall be final.

Stat. Auth.: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 182.515, 182.525, 423.020, 423.030 & 423.075
Hist.: DOC 7-2012, f. & cert. ef. 6-19-12

Rule Caption: Suspension/Restriction of Visits/Removal From Inmate Visiting List.

Adm. Order No.: DOC 8-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12

Notice Publication Date: 1-1-2012

Rules Amended: 291-127-0320

Subject: OAR 291-127-0320, by its terms, requires that a superintendent or designee issue a final decision on a recommended action to suspend, restrict, or remove a visitor from an inmate's approved visiting list within 45 days of receipt of a review request. This rule amendment is necessary for the department to establish a flexible, extended timeframe for a superintendent/designee to issue a final order of a recommended action to suspend, restrict, or remove a visitor from an inmate's approved visiting list when the circumstances giving rise to the suspension, restriction, or removal action are part of a pending administrative or criminal investigation, or in other

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extraordinary circumstances, which in the sole judgment of the superintendent/designee requires or warrants additional time. This amendment is also needed to clarify that if a visitor does not timely submit a written review request, the recommended action contained in the notification and written report shall serve as the superintendent's/designee's decision without further action.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-127-0320

Suspension/Restriction of Visits/Removal From Inmate Visiting List

(1) The superintendent or designee may suspend the inmate's visits with the visitor, or restrict visitation to basic visiting, or remove a visitor from an inmate's approved visiting list if the superintendent or designee determines that:

(a) The visitor does not qualify for visits in accordance with these rules; or

(b) There exists reasonable suspicion that continued visitation between the visitor and the inmate poses a threat to the safety, security, health and good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors or the community; or

(c) There is a court order or Board of Parole and Post-Prison Supervision action form which prohibits contact with the visitor.

(2) Notification and Decision: A written report (CD 704D) documenting the suspension shall be prepared and sent to the inmate and to the inmate's visitor within seven days of the action. The report shall contain a short and concise statement of the reason(s) for the suspension and a recommendation for the action to be taken. The recommended action may be assignment to basic visiting, restriction of visiting for a limited duration, or permanent removal.

(a) The visitor may request review of the recommended action by submitting a written review request to the superintendent/designee. A review request must be received by the superintendent/designee no later than 30 days of the date of the issuance of the notification of suspension.

(b) If the visitor does not timely submit a written review request, the recommended action contained in the written report shall be accepted by the superintendent/designee and serve as the superintendent's/designee's decision without further action.

(c) If the visitor timely submits a written review request, the superintendent/designee shall issue a final decision on the recommended action within 45 days of the receipt of the request, absent a pending administrative or criminal investigation or other extraordinary circumstance which in the sole judgment of the superintendent or designee requires or warrants additional time.

(d) The visitor may request an administrative review of the superintendent's/designee's decision as specified in OAR 291-127-0330.

(e) The provisions of OAR 291-127-0320(2) apply retroactively to notifications of visiting suspensions and decisions issued prior to, on, and after November 1, 2011.

(3) The superintendent or designee may temporarily suspend an inmate's visits for 14 days in the event of an on-going investigation. The superintendent or designee shall provide written notification of the suspension to the inmate and the inmate's visitor(s). If at the conclusion of the investigation or 14 days whichever occurs first, the superintendent or designee determines the visitor's status shall be suspended, the notification process specified in section (2) above will begin.

(4) Reconsideration: Visitors who have been permanently removed from any inmate's approved visiting list, or whose visitation with any inmate has been permanently restricted to basic visiting, may request reconsideration five years after the date of the action. Requests for reconsideration must be in writing and submitted to the Assistant Director of Operations or designee.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 179.040, 183.315, 423.020, 423.030, 423.075 & 423.078

Stats. Implemented: ORS 179.040, 183.315, 423.020, 423.030, 423.075 & 423.078

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05; DOC 22-2011(Temp), f. & cert. ef. 11-1-11 thru 4-29-12; Administrative correction, 5-25-12; DOC 8-2012, f. & cert. ef. 6-19-12

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Department of Energy
Chapter 330

Rule Caption: Permanent rules to administer the energy conservation tax credit within the Energy Incentives Program.

Adm. Order No.: DOE 6-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12

Notice Publication Date: 5-1-2012

Rules Adopted: 330-210-0000, 330-210-0010, 330-210-0020, 330-210-0030, 330-210-0040, 330-210-0045, 330-210-0050, 330-210-0060, 330-210-0070, 330-210-0080, 330-210-0090, 330-210-0100, 330-210-0150

Rules Repealed: 330-210-0000(T), 330-210-0010(T), 330-210-0020(T), 330-210-0030(T), 330-210-0040(T), 330-210-0045(T), 330-210-0050(T), 330-210-0060(T), 330-210-0070(T), 330-210-0080(T), 330-210-0090(T), 330-210-0100(T), 330-210-0150(T)

Subject: These rules provide the operating framework for the energy conservation tax credit within the Energy Incentives Program. The rules include the application process, prioritization of applications within funding limits and issuance of tax credits. In December 2011, the Department of Energy adopted temporary rules for the energy conservation tax credit program created by HB 3672 (2011) and amended by HB 4079 (2012), this rulemaking repeals the temporary rules and implements permanent rules. Since filing the temporary rules, the department has issued several funding opportunity announcements, engaged an advisory committee to provide comments and feedback on the rules and held a public hearing.

Rules Coordinator: Kathy Stuttaford — (503) 378-4040

330-210-0000

Applicability of Rules in OAR 330, Division 210

These rules implement the incentive program for energy conservation projects established by House Bill 3672 (2011) and amended by House Bill 4079 (2012). The rules also provide procedures for submission, agency review and selection of energy conservation projects for preliminary and final certification of tax credits.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0010

Definitions

For the purposes of this division, the following definitions apply:

(1) "Applicant" means a person who has applied for or who has received a preliminary certificate for a conservation energy incentive program tax credit or who has submitted an informational filing for a small premium project.

(2) "Certified cost" means the cost certified in the final certification.

(3) "Cost" has the meaning given in ORS 469B.270, the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the director of the department.

(6) "Energy conservation project" has the meaning given in ORS 469B.270, any capital investment for which the first year energy savings yields a simple payback period of greater than three years. "Energy conservation project" does not include:

(a) Recycling equipment, products and projects;

(b) Transportation projects;

(c) Energy recovery as that term is defined in ORS 459.005; or

(d) Alternative fuel vehicles.

(7) "Incremental cost" means the difference between the cost of doing the energy conservation project with the energy efficient features and the cost to construct a similar project at current Oregon energy code or documented industry standard.

(8) "Installation or construction" means the process of physical assembly of an energy conservation project or supporting infrastructure at its operating location.

(9) "New construction" means a building project that is newly constructed.

(10) "Opportunity period" means the timeframe specified in an Opportunity Announcement for the department to accept applications for energy conservation projects.

(11) "Qualified third party" means a third party, selected by the director, that provides recommendations to the director regarding a research and development energy conservation project.

(12) "Qualifying project cost" means the amount of the energy conservation project's cost that is used in calculating the amount of tax credit certified.

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(13) "Research and development project" means an energy conservation project that a qualified third party recommends to the department as one that demonstrates innovation.

(14) "Service life" means equipment service life as established in the 2011 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers' (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the department receives a complete preliminary application or, for equipment not rated by ASHRAE, as determined by the department.

(15) "Small premium project" means an energy conservation project with qualifying project costs of less than \$20,000 for which the department has identified prequalified measures.

(16) "Total building retrofit" means a comprehensive building retrofit that includes energy efficiency projects for each energy-using system including the building envelope. A building retrofit that does not include each energy-using system may also apply as a total building retrofit; if the project meets the eligibility standards described in OAR 330-210-0070.

(17) "Total project cost" means all costs directly associated with an energy conservation project, including costs that are not qualifying project costs.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0020

Opportunity Announcement

(1) The department will announce the availability of tax credits for energy conservation projects by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit caps specified in ORS 469B.303.

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to future Opportunity Announcements, including between categories.

(4) The Opportunity Announcement will include the following information:

- (a) Objectives for the opportunity period;
- (b) The amount of tax credits available;
- (c) Application requirements, as defined in OAR 330-210-0050;
- (d) Dates of the application opportunity period;
- (e) Instructions and directions to the required application forms and materials;
- (f) Minimum technical standards based on relevant industry standards used to conserve or reduce energy use;
- (g) The criteria to be applied in prioritizing applications for tax credits, as described in OAR 330-210-0060; and
- (h) Other information the department considers necessary.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0030

Preliminary Certification Application

(1) Any person may apply for preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement. A preliminary certification application is not required for applicants submitting an informational filing under the small premium project process.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application accompanied by the fee specified in these rules. The department will not process applications received outside of an opportunity period.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) The department will not accept amendments to applications during the opportunity period. An applicant may withdraw an application and submit a replacement application during the opportunity period. The department will not process fees for applications withdrawn before the end of the opportunity period.

(4) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating in the partnership, joint venture or association. The department may use this information to ensure compliance with ORS 469B.288(3).

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation, or LLC and its parent corporations, members, and any close affiliates or subsidiaries. The department may use this information to ensure compliance with ORS 469B.288(3).

(C) If the applicant is a public or governmental entity, the application must include written authorization from the entity's governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.

(d) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the energy conservation project at the time of installation or construction of the project.

(e) A description of the personnel and teams that will be working on the energy conservation project's development, implementation and operation.

(f) If the applicant has received final certification of tax credits or payment of grants issued by the department within the last 5 years, the application must contain a statement about the operational status of the projects awarded such grants or tax credits.

(g) The location of the energy conservation project.

(h) A statement explaining how and in what amount the energy conservation project will reduce the consumption of purchased energy or use energy more efficiently.

(A) The statement must identify the annual energy use separated by fuel type of the energy conservation project at the following conditions: proposed conditions, baseline conditions, along with existing conditions, if the project involves a retrofit.

(i) Annual energy use at proposed conditions must be calculated using energy engineering methods as outlined in the Opportunity Announcement.

(ii) Baseline conditions and assumptions must be described in detail.

(iii) For retrofit projects, existing annual energy usage must be supported by a minimum of 24 consecutive monthly utility bills or a calculation approved by the department.

(B) If applicable, provide information about the expected level of sustainable building practices project performance.

(i) A detailed description of the energy conservation project, including information that demonstrates how the project will be technically feasible and how the project will operate for at least five years as represented in the application. This may require documentation in addition to the application form.

(j) The expected operational life of the energy conservation project.

(k) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits.

(L) The number and type of new jobs that will be created by the energy conservation project and the number of existing jobs that will be sustained throughout the construction, installation and operation of the project. Job estimates should be submitted in hours. These hours must directly relate to the energy conservation project.

(m) The anticipated total project cost, including the energy conservation project's incremental cost, if applicable.

(n) The amount of anticipated or received incentives directly related to the energy conservation project.

(o) A project schedule.

(p) All research and development projects must include a recommendation from a qualified third party that the project demonstrates innovation.

(q) A description of the applicant's installation or construction financing plan.

(r) The dollar amount of tax credit requested by the applicant.

(s) If the applicant has already started installation or construction of the energy conservation project, a written description of the special circumstances that rendered the filing of an application prior to the start of construction or installation unreasonable.

(t) Other information the department considers necessary.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

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Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0040

Fees

The department adopts the following schedule of fees as provided by ORS 469B.294 for applicants. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants, except those applying through the small premium project process, must submit an application fee of \$200 with their preliminary certification application.

(2) Applicants applying through the small premium project process must submit a fee of \$60 with their informational filing.

(3) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying project cost multiplied by 0.55 percent. Small premium projects are not subject to the technical review fee.

(4) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(5) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying project cost multiplied by 0.5 percent. All applicants seeking final certification for a project, including small premium projects, are required to apply for final review and pay the final review fee.

(6) If the department is unable to complete a scheduled inspection due to actions by the applicant, the department will require the applicant to pay a re-inspection fee of \$400 before rescheduling the inspection.

(7) Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant in obtaining a pass-through partner or partners, the fee for that assistance is 1.25 percent of the tax credit amount, up to \$25,000, plus \$100 per tax credit certificate issued.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$100 per tax credit certificate issued.

(8) Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee of \$200 plus \$100 per tax credit certificate issued.

(9) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0045

Small Premium Project Review Process

(1) Projects with qualifying project costs of less than \$20,000 may utilize the small premium project informational filing process, instead of the preliminary certification and competitive review process, if the project complies with the minimum department-established standards. Energy conservation projects with qualifying project costs of less than \$20,000 may participate in the preliminary certification and competitive review process.

(2) The department will issue an Opportunity Announcement for small premium projects. The opportunity period will remain open from the date the department issues the Opportunity Announcement until stated in the Opportunity Announcement and could end sooner if funds are exhausted. The Opportunity Announcement will list the types of technologies with the minimum standards as defined by the department. The types of technologies may include:

- (a) Adjustable Flow Irrigation Pumping,
- (b) Agricultural Irrigation System Improvement,
- (c) Boiler-Vent Dampers,
- (d) Building Envelope Thermal Improvement,
- (e) Compressed Air Systems Components,
- (f) Direct-fired Radiant Heating in High Volume Spaces,
- (g) Ductless Heat Pumps with Variable Refrigerant Flow,
- (h) Energy Improvements to Commercial Greenhouses,
- (i) High Performance Homebuilding,
- (j) Heat Pump Service Hot Water Heating,
- (k) Industrial Piping Insulation,
- (L) LED Outdoor Lighting,
- (m) Premium Efficiency Electric Air Conditioning Equipment,
- (n) Solar Thermal Water Heating, and
- (o) Technology offerings approved by the department under section

(9).

(3) Applicants must submit a complete informational filing prior to the project's installation or construction on the form specified in the Opportunity Announcement and include:

(a) The required filing fee; and

(b) Information demonstrating that the project meets the definition of an energy conservation project and is located in Oregon.

(4) Small premium projects are eligible for predetermined tax credit amounts based on savings and cost; but the tax credits cannot exceed 35 percent of certified costs. The department will post the predetermined tax credit amounts in the Opportunity Announcement.

(5) If the tax credits available for small premium projects have been fully allocated before the department receives a complete informational filing from an applicant, the applicant will not be eligible for any tax credits for the project under the small premium review process but may participate in the preliminary certification competitive review process.

(6) If the department finds that the informational filing is complete, the department will confirm in writing the receipt of the informational filing. The department will not process incomplete filings, and will provide written notification to the applicant of the fact that the filing is incomplete.

(7) Receipt of an informational filing does not guarantee eligibility and issuance of a final certification for the tax credit. Applicants must also comply with all applicable statutory requirements and requirements listed these rules in order to receive tax credits. The department will determine the eligibility of the small premium project prior to issuing a final certificate.

(8) Small premium project informational filings will expire 12 months after the date the department receives the informational filing, unless the department receives a complete final certification application before the end of the 12 month period.

(9) The department may consider proposals for new technology offerings for small premium projects within this section. The proposal application will include a set of guidelines that define the information that must be submitted for department review. The department will evaluate proposals and determine whether to include the technology and the rate at which to incentivize. The department may provide an opportunity for public comment on approved proposals prior to adding them to the Opportunity Announcement. All proposals must include:

(a) Regional data on the mean and range of technology unit costs,

(b) Regional data on the mean and range technology unit energy savings,

(c) Market projections,

(d) Evaluation of barriers and opportunities to market,

(e) Research references (e.g. periodical and article reviews),

(f) Evidence that the technology is currently listed as an emerging energy conservation technology by the Northwest Energy Efficiency Alliance, Bonneville Power Administration, U.S. Department of Energy or other agencies recognized and approved of by the department, and

(g) Any other information the department requires.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0050

Completeness Review

(1) Following the opportunity period, the department will review all preliminary certification applications, other than those participating in the small premium project process, to determine whether:

(a) All sections of the application are complete as outlined in the Opportunity Announcement.

(b) The applicant has submitted the required fee.

(c) The project meets the definition of an energy conservation project.

(d) The applicant intends to begin construction within 12 months of award.

(e) The applicant is applying prior to the installation or construction of the project.

(A) If the applicant applies after installation or construction of the project has started, the department will deny the application unless a written explanation of the special circumstances is received and approved by the director.

(B) Failing to submit a timely application or the fact that the project was not selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

(f) The energy conservation project is located in Oregon.

(2) If the department finds that the application is complete, the application will move into the competitive review process and the department will notify the applicant in writing.

ADMINISTRATIVE RULES

(3) The department will deny all incomplete applications and notify applicants in writing of the reason for denial of the application.

(4) The department considers the completeness review a test; the decision to deny an incomplete application is not subject to review under ORS chapter 183.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51
Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51
Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0060

Competitive Review

(1) The department will conduct a competitive review of all applications that pass the completeness review, other than those participating in the small premium project process.

(2) During the competitive review, the department's internal review team will prioritize applications for preliminary certification according to the criteria described in the rules. Depending on the Opportunity Announcement objectives, the department may give greater or lesser weight to each of the criteria listed in rules.

(3) For the purposes of the competitive review, the department will compare projects of similar technology types against each other. The technological sector categories for energy conservation projects are:

(a) Building envelopes, weatherization.

(b) Renewably sourced thermal energy projects that use a renewable energy source, such as solar, biomass or geothermal, directly without converting it to electricity. Within this category, energy savings will be determined through energy displacement.

(c) Commercial building systems.

(d) Sustainable buildings. This category is for projects that are eligible for tax credits under the standards for new construction and total building retrofit.

(e) Commercial, agricultural and industrial processes.

(f) Cool Schools. This category is for projects in which the applicant is a public school, educational services district or other entity considered as an eligible Cool Schools applicant by the department.

(4) Within the technological sector categories, the department may divide the applications into tiers based on project size. The Opportunity Announcement will have details about any tiers prior to implementation.

(5) In the Opportunity Announcement, the department will list the evaluation criteria for the competitive review. The competitive review will give preference to projects that have the highest energy savings over the five-year tax credit period per tax credit dollar requested. Additional criteria the department may consider includes:

(a) The amount of energy saved over the equipment's lifetime;

(b) The project's expected lifespan compared to the project's simple payback period;

(c) The incentive structure and whether the energy savings benefit a party other than the owner;

(d) Lifetime energy savings compared to lifetime cost (benefit-to-cost ratio);

(e) The project implementation plan;

(f) The project financial plan;

(g) Information on jobs created and sustained;

(h) The geographical area and local economic conditions of the site location;

(i) Agreement to a voluntary reduction of requested tax incentive; and

(j) Agreement to a voluntary measurement and verification plan, which includes an agreement to share the results with the department.

(6) The department's internal review team will recommend to the director which projects to advance to technical review based on the competitive review results. The director will review and then amend or approve the recommendations.

(7) The department will notify applicants of the competitive review's outcome. The department may place projects not advanced to the technical review phase on a supplemental list, pending the technical reviews of the selected projects. The department will retain the supplemental list until preliminary certifications have been issued for the selected energy conservation projects. The supplemental list will include only those projects submitted in response to the particular Opportunity Announcement.

(8) If an applicant has not started installation or construction of the energy conservation project, an applicant may apply again for the same project in a future opportunity period by submitting a new application and fee. The department will not apply fees or applications submitted in response to a previous Opportunity Announcement to future Opportunity Announcements.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51
Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0070

Technical Review

(1) Once the applicant has paid the technical review fee, the department will conduct a technical review of projects advanced from the competitive review process. If the applicant does not submit the required payment to the department within 14 calendar days of notification for technical review, the department may deny the application.

(2) The department will review the information provided in the application against industry standards to determine whether the project is technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible the energy conservation project must meet the following requirements:

(a) The project must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be owner, contract purchaser or project lessee at time of the project's installation or construction.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, tribe or public entity that partners with an Oregon business or resident. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A project located at a residential property must be rental property. A rental property must meet the requirements of the state building codes and contain a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.

(e) The applicant must demonstrate the ability to begin construction within 12 months from the date the department issues the project's preliminary certification.

(f) The energy conservation project must meet the simple payback requirements. The department bases simple payback on total project cost divided by the qualified annual energy savings. Total project cost is calculated for this purpose before any tax credits or grants are applied.

(g) An applicant for a new construction or total building retrofit project must demonstrate that the project meets the current standard, at the time of application submission, for one of the following:

(A) Leadership in Energy and Environmental Design (LEED);

(i) The project must be seeking LEED platinum certification with a minimum of eight Energy and Atmosphere points; or

(ii) Using the appropriate peer reviewed energy modeling program, the project must show a minimum 26 percent improvement over ASHRAE 90.1-2007, without addenda.

(B) Green Globes

(i) The project must be seeking Green Globes, Four Globes certification; or

(ii) Using the appropriate peer reviewed energy modeling, the project must be a building falling within the 95th percentile, or better, of the equivalent building stock listed in the Commercial Buildings Energy Consumption Survey (CBECS). Where an equivalent building type is not listed, the modeling must be equivalent to a minimum 26 percent improvement over ASHRAE 90.1-2007, without addenda.

(C) Reach Code

(i) Project plans must be submitted to a local building department and approved for building under the Oregon Reach Code.

(ii) For proposed buildings either required to model or opting for the modeling path, the energy model must show at least an 18 percent improvement over the Oregon Energy Efficiency Specialty Code.

(D) Earth Advantage

(i) The project must be seeking Earth Advantage Gold Certification;

or

(ii) Using the appropriate peer reviewed energy modeling program, the project must show a minimum 18 percent improvement over the Oregon Energy Efficiency Specialty Code.

(h) An application for replacing inefficient or obsolete equipment must demonstrate that the equipment is beyond its maximum service life, as determined by the department.

(i) A qualified third party must evaluate and recommend research and development projects.

ADMINISTRATIVE RULES

(4) The department will review energy conservation project cost for eligibility to determine qualifying project costs. Cost may include the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project. The application must document total project cost by providing a line item break out.

(a) Qualifying project costs include:

(A) The cost of components of the proposed energy conservation project;

(B) Fees to design or engineer the energy conservation project;

(C) The cost of title searches, escrow fees, permit and license fees, excluding fees required by this rule, and shipping;

(D) Costs for all materials and supplies needed for the erection, construction, installation or acquisition of the proposed energy conservation project;

(E) Cost of work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed energy conservation project;

(iii) Project management and other similar costs may only account for up to 15 percent of the total qualifying project costs; and

(iv) Costs for employees' or contractors' work on the energy conservation project must be detailed and documented as to specific tasks, hours worked and compensation costs.

(F) Costs for legal counsel that is directly related to the development of an energy conservation project (excluding litigation, intellectual property, etc.);

(G) Costs of training associated with the energy conservation project that is approved by the department; and

(H) Other costs the department determines should be included.

(b) Qualifying project cost does not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Intellectual property search, application and filing payments;

(D) Donated, in-kind or volunteer labor and materials;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for an energy conservation project including, but not limited to the tax credit review charge, costs associated with the creation and development of the certified public accountant verification letter and costs associated with securing a pass-through partner for the project;

(F) Routine operational, routine maintenance and repair costs associated with the energy conservation project;

(G) Expenses that are directly or indirectly offset with federal fee waivers;

(H) Expenses that are deemed not to have a benefit to the energy conservation project, including but not limited to, fines, penalties, entertainment, food, alcohol, gifts and lobbying; and

(I) Other costs the department determines should be excluded.

(c) If an energy conservation project serves more than one purpose, qualifying project cost includes only items needed to save energy. This includes new or replacement equipment that may cost more because of its energy saving features. The department may do inspections to verify qualified project costs.

(d) The department will calculate incremental cost as the cost above a department-determined reasonable minimum expected to construct a similar project without energy efficient features. Qualifying project cost will be limited to incremental cost for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.

(A) In new construction and total building retrofit projects, qualifying project cost is the difference between building to code and building to meet or exceed the applicable standards.

(B) In other energy conservation projects, qualifying project cost is the difference between prevailing practices for that business or industry and a more energy efficient method.

(e) Qualifying project costs may be reduced by the following:

(A) The department will prorate, based on ASHRAE standards or as otherwise determined in these rules, the qualifying project cost based on the remaining service life of the equipment. If the baseline project has exceeded its service life, the department will consider only an incremental project eligible for a tax credit.

(i) Energy conservation projects must have a simple payback of greater than three years and less than the service life of the energy conservation project.

(ii) An applicant may submit, for department approval, a published or recognized standard to determine life expectancy. If a published or recognized standard is unavailable, the department may use a 15-year limit on life expectancy.

(B) Costs for a portion of or an entire energy conservation project that has previously received a tax credit or grant issued by the department.

(C) Costs to replace the same baseline energy conservation project more than once.

(D) The department may require that the baseline energy conservation project be specifically identified and permanently decommissioned.

(f) New construction, total building retrofit and small premium projects must provide cost information, but the department calculates the tax credit using a predetermined amount described in the applicable Opportunity Announcement.

(g) An applicant may incur qualifying project costs prior to the submission of an application, but may not begin installation or construction.

(5) The department will determine whether the project is a single energy conservation project, or is part of a larger project in combination with other applications.

(a) The department considers a single energy conservation project as one or more projects that are applied for within the same Opportunity Announcement, owned or controlled by the same person and located in the same building or structure.

(b) For the purposes of this subsection, "same person" includes subsidiary corporations and companies, other subsidiary business organizations or other entities owned or controlled by the same parent corporation but excludes equity-only financing partners.

(c) The department may reduce the potential tax credit award or deny the application if the department finds that the proposed project is not a single energy conservation project.

(6) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days, the department may deny the application.

(7) The department will notify the applicant in writing if the department denies the application during the technical review.

(8) If the technical review determines that information submitted by the applicant during the competitive process was inaccurate, the department may deny the application.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0080

Preliminary Certification

(1) The department may issue a preliminary certificate if it determines that the energy conservation project is technically feasible and capable of operating in accordance with the representations made by the applicant.

(2) The department may issue a tax credit that is less than the amount requested in the energy conservation project application, pursuant to statute and applicable rules.

(3) The sum of any incentives, grants, credits, other public funds and the energy conservation tax credit incentive may not exceed total project costs.

(4) The preliminary certificate will state the qualifying project cost, the potential amount of allowable tax credit and any conditions for claiming the credit.

(5) The applicant must report to the department on the project's status beginning one year from the issuing date of the preliminary certificate, unless the department has already received the project's application for final certification. The applicant must continue to submit project progress reports to the department every six months after the initial report until the department receives the project's application for final certificate. Failure to submit reports may result in denial of a final certification.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the original preliminary certification or until the sunset of the program, whichever comes first.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

ADMINISTRATIVE RULES

330-210-0090

Amendments to Preliminary Certifications

(1) The applicant must notify the department of any changes to the project described in the application for preliminary certification. Changes that result in less than a five percent cumulative change in energy savings may be submitted with the final certification application.

(2) Small premium projects are not eligible for amendments to informational filings.

(3) An applicant must declare all changes to the energy conservation project by the time the department receives the final certification application. Undeclared changes found in the application for final certification or through later inspection will result in denial of final tax credit certification.

(4) Applicants must submit amendments on the form specified in the Opportunity Announcement.

(5) The applicant must demonstrate that the energy conservation project, with the proposed change, will continue to meet the requirements of statute, rule and the Opportunity Announcement; be technically feasible; will operate as represented and will remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical documentation supporting the proposed amendment. The department may deny amendments submitted without such justification.

(6) An amendment may result in a reduction in tax credit, but may not increase the tax credit amount certified in the preliminary certificate.

(7) If an amendment request does not include all information needed to complete the review, the department may provide the applicant a written request for additional information. If the applicant does not provide the requested information to the department within 30 calendar days, the department may deny the amendment request to amend the preliminary certification.

(8) Requests for amendments must include payment of the appropriate fee.

(a) The department may accept non-substantive changes, such as change of responsible party information, without payment of the fee and at any time up to the time of submission of the application for final certification.

(b) Changes that result in less than a five percent cumulative change in energy savings may be submitted without payment of the fee and with the final certification application.

(9) The department will evaluate amendments to determine impact on energy savings and other factors, including whether the change would have affected the outcome of competitive review, which may result in pro-rating the potential tax credit amount based on energy savings or project cost or denial of the amendment request.

(10) The department will decide whether to approve the amendment request.

(a) If approved, the department will draft an amended preliminary certification, which may contain new or amended conditions and requirements.

(b) If denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request. The amendment fee will not be applied to future amendments.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0100

Final Certification

(1) An energy conservation project must be completed and operational prior to applying for a final certification. An applicant must submit requests for amendments to preliminary certifications prior to or at the time of submission of the final certification application.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or those without the final review fee.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection to verify:

(a) That the energy conservation project is complete and operating.

(b) Compliance with statute, rules and the preliminary certification or informational filing.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the project is leased or rented.

(e) That the property taxes for the project location are current.

(f) That the energy conservation project will be maintained and operated for at least five years.

(g) The total project costs for purchase and installation or construction of the energy conservation project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that no contract or loan agreements directly related to the project are in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(h) Other information the department considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application for final certification.

(6) The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification application.

(7) The department will issue a final certification upon verification that the energy conservation project's installation or construction is complete and that the project complies with statute, rules, the preliminary certification or informational filing, and any other applicable requirements.

(a) The department may issue a tax credit certificate up to 35 percent of the qualifying project cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate or reserved in the informational filing, but may not certify a greater amount.

(b) The sum of any incentives, grants, credits, other public funds and the energy conservation tax credit may not exceed total project costs.

(8) The department will send a written notification to the applicant of its decision whether to issue a final certification within 60 days, after the department receives a complete application for final certification. If a written decision from the department is not issued within 60 days after receipt of the complete application, then the application is rejected and no further action will be taken. Any time required to provide additional information as provided in OAR 330-210-0100(5) is not included in this 60 day period.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

330-210-0150

Compliance and Pass-through

All participants in this program are subject to OAR 330-230.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12

Rule Caption: Permanent rules for the pass-through and compliance activities of the Energy Incentives Program

Adm. Order No.: DOE 7-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12

Notice Publication Date: 5-1-2012

Rules Adopted: 330-230-0000, 330-230-0010, 330-230-0020, 330-230-0030, 330-230-0040, 330-230-0050, 330-230-0060, 330-230-0110, 330-230-0120, 330-230-0130, 330-230-0140, 330-230-0150

Rules Repealed: 330-230-0000(T), 330-230-0010(T), 330-230-0020(T), 330-230-0030(T), 330-230-0040(T), 330-230-0050(T), 330-230-0060(T), 330-230-0110(T), 330-230-0120(T), 330-230-0130(T), 330-230-0140(T)

Subject: These rules provide the operating framework for the transfer of tax credits through the pass-through process and the department's compliance activities to inspect and verify projects and systems. In December 2011, the Department of Energy adopted

ADMINISTRATIVE RULES

temporary rules for the pass-through and compliance activities of the Energy Incentives Program created by HB 3672 (2011) and amended by HB 4079 (2012). This rulemaking repeals the temporary rules and implements permanent rules. The compliance rules apply to the program. The pass-through rules are only for the tax credit programs. Since the filing of temporary rules, the department has engaged stakeholders in two meetings to collect comments and feedback on the rules and held a public hearing.

Rules Coordinator: Kathy Stuttaford—(503) 378-4040

330-230-0000

Applicability of Rules in OAR 330, Division 230

These rules provide procedures for compliance activities and pass-through transactions for the incentive programs established in House Bill 3672 (2011) and amended by House Bill 4079 (2012). The compliance rules in OAR 330-230-0010 to 330-230-0060 apply to all applicants for energy incentive programs for energy conservation, transportation and renewable energy grants as governed by ORS 469B. The pass-through rules in OAR 330-230-0110 to 330-230-0150 apply to all applicants for the energy incentive program for energy conservation projects as governed by ORS 469B.270 through 469B.306 and transportation projects as governed by ORS 469B.320 through 469B.347.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0010

Definitions for Compliance

For the purposes of OAR 330-230-0010 to 330-230-0060 the following definitions apply:

(1) "Department" means the Oregon Department of Energy.

(2) "Director" means the director of the department.

(3) "Period of operation" means:

(a) For an Energy Conservation Project or a Transportation Project, five years from the date of issuance of the tax credit certificate.

(b) For a Renewable Energy Production System, five years from the date of final payment under the Performance Agreement.

(4) "Project" means the system, activity or facility under inspection or review by the department.

(5) "Project inspection" means a physical examination by the department of an Energy Conservation Project or a Transportation Project to determine if the project conforms to the Preliminary Certificate or application for preliminary certification.

(6) "Project review" means an examination by the department of the records, facilities or operations of an applicant for a Renewable Energy Development grant.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0020

Purpose of Inspection or Review

(1) The department may require project inspection or project review at any time from the date of initial application through the end of a project's period of operation.

(2) Inspections or reviews may be conducted by the department to verify:

(a) The amount certified for a credit,

(b) Completion of a project,

(c) A project is operational,

(d) Ownership of a project,

(e) Compliance with the preliminary certificate or application for preliminary certification and any amendments,

(f) Compliance with a performance agreement, or

(g) Compliance with ORS chapter 469B and any applicable rules or standards adopted by the director.

(3) The applicant or its designated representative must be present during the inspection or review.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0030

Selection of Projects, Notice

(1) Criteria for selecting projects for inspection or review includes, but is not limited to, consideration of project cost, type and location.

(2) The department will provide the applicant written notice of the inspection or review in advance of the planned inspection or review date.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0040

Project Access

(1) The applicant must provide safe access to all areas of the project the department reasonably considers necessary to complete the inspection.

(2) The exact safety needs and requirements will be specific to each project and may include, but are not limited to, a secure ladder or stairs for access, and notice of any hazardous conditions.

(3) The department will not inspect a portion of a facility where the access provided presents, in the opinion of the department, an unreasonable risk to personal safety.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0050

Inspection or Review Outcomes

(1) A project will pass inspection or review if sufficient information is available for the department to verify the statements made in an application, or conformance with conditions of a certification or performance agreement.

(2) The department may record that the inspected project has failed an inspection if:

(a) The applicant fails to provide a reasonable opportunity for the department to conduct an inspection or review,

(b) The applicant fails to provide sufficient and safe access to the project,

(c) The project is not operational,

(d) The applicant or project owner misses a scheduled inspection or review appointment without notice to the department,

(e) The project does not conform to the preliminary certificate, application for preliminary certification, ORS chapter 469B or any applicable rules or standards adopted by the director, or

(f) The project does not comply with the performance agreement.

(3) The department will review and may approve an application for a project that has failed a project inspection, if the applicant provides information explaining the reason or justification for the discrepancies and demonstrates the reason for the failure noted under 2(e) and 2(f) of this section. The project must also meet all other program requirements. Applicants must submit requested information within 30 calendar days of notification of the failed inspection.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0060

Failed Inspections or Reviews, Notice, Reconsideration

(1) The department may deny a tax credit or grant to, or may take action to recover any tax credit or grant already issued from, an applicant who has not resolved the problem identified in a failed project inspection or review.

(2) The department will provide written notice to the applicant explaining the reason for a denial, suspension or revocation of a tax credit certificate or grant due to a failed project inspection or review.

(3) The applicant may request reconsideration of the failed project inspection or review. A request for reconsideration must be received by the department within 30 calendar days of the date of the notice of failure.

(4) A request for reconsideration must include an explanation of why the applicant believes the project should pass inspection or review, a request for a new inspection or review and payment of the required re-inspection fee.

(5) The department may waive all or part of the re-inspection fee if it denies the request for reconsideration or accepts the applicant's explanation of special circumstances for the failure of the inspection or review.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

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Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0110

Definitions for Pass-Through

For the purposes of OAR 330-230-0110 to 330-230-0150 the following definitions apply:

(1) "Department" means the Oregon Department of Energy.

(2) "Pass-through amount" means the amount, equal to the present value of the credit calculated in accordance with the formula set out in OAR 330-230-0130, paid to an applicant in exchange for the right to claim the tax credit.

(3) "Pass-through partner" means an individual or entity that pays the pass-through amount to an applicant and receives the tax credit certificate in place of the applicant.

(4) "Transferee" means an individual or entity that pays the pass-through amount to an applicant that has been issued the tax credit certificate, and receives a re-issued tax credit certificate in place of the applicant.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0120

Pass-Through Eligibility

(1) An applicant eligible to receive a tax credit may transfer the credit in return for a cash payment.

(2) An eligible individual or entity that pays the present value to purchase the approved tax credit from the applicant is eligible to claim the tax credit in place of the original applicant.

(3) A tax credit may be transferred one time only, from the applicant to an eligible pass-through partner.

(4) A tax credit that has been transferred to a pass-through partner may be first claimed during the tax year of the pass-through partner in which the pass-through partner paid for the credit, in accordance with ORS 469B.297(3) or 469B.338(3).

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0130

Pass-Through Amount

(1) The following formulas will be used to calculate the present value of the tax credit for transfer purposes:

(a) For tax credits that may be claimed over 5 succeeding tax years, the formula is: Tax Credit Amount/[1 + (3(5 year Treasury yield rate) - 3 year net rate of change for the urban CPI for the west region)]⁵ = Present Value

(b) For tax credits that may be claimed in one tax year the formula is: Tax Credit Amount/[1 + (2(2 year Treasury yield rate) - net rate of change for the urban CPI for the west region)]¹ = Present Value

(2) Using the formulas in (1)(a) and (b) of this rule, the department will review and recalculate the present value of the tax credit on a quarterly basis and will publish the results on the department's web page. The department will use the rates in effect on the 15th of March, June, September and December to calculate the present value for the quarter beginning on the first of the following month.

(3) In the event of a deflationary environment, the department may adjust the formulas in section (1), by adding the urban CPI for the western region, to ensure the present value is less than the certified tax credit amount.

(4) If an applicant elects to transfer the tax credit, the pass-through amount is determined by the present value in effect on the date the department receives the complete application for preliminary certification or the complete informational filing. Amendments will not change the pass-through rate.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0140

Pass-Through Process

(1) An applicant planning to transfer the tax credit must select the pass-through option on the final certification application.

(2) If a pass-through partner has not been identified at the time of the preliminary certification application, the applicant must note "partner to be

identified" and submit additional information when the pass-through partner is identified.

(3) If an applicant chooses to transfer the tax credit, the application for final certification must include a complete, signed pass-through partner agreement form.

(4) When an applicant chooses to transfer a tax credit, the department may hold the application for final certification until pass-through partner information is received by the department. Any application in which the applicant has indicated a choice to transfer the tax credit is not a "completed application" until the department receives the completed final certification application form, the appropriate fee and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner.

(5) If the tax credit is being transferred to more than one pass-through partner, the certification period for each partner will begin during the tax year the partner pays for the credit.

(6) The department will not issue a tax credit certificate to a pass-through partner until the appropriate criteria, conditions and requirements of the preliminary certification and these rules are satisfied.

(7) For purposes of administering the sunset of the program, the department may issue a tax credit to an applicant, even though the applicant previously indicated a choice to transfer the tax credit to a pass-through partner, if the department has not received a completed application that includes the signed pass-through partner agreement form at least 60 calendar days prior to the sunset date for the program. A tax credit will be issued to an applicant if the applicant and the project meet all applicable requirements and the only reason the application for final certification is incomplete is because the pass-through partner agreement form is not complete.

(8) The department will issue a tax credit certificate to the pass-through partner when the applicant confirms receipt of a payment equal to the present value of the tax credit and the applicant relinquishes any claim to the credit.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 7-2012, f. & cert. ef. 6-19-12

330-230-0150

Transfer of Tax Credits Issued to an Applicant

(1) An applicant who has been issued a tax credit certificate may transfer the tax credit to an eligible transferee through the department process provided by these rules, provided the transfer occurs within 12 months of the issuance of the tax credit certificate to the applicant.

(2) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.297(2) or 469B.338(2).

(3) The department will not provide assistance in locating a transferee.

(4) A tax credit certificate may only be re-issued once, upon a transfer from the applicant to the transferee.

(5) Tax credit certificates may be re-issued only in the names of the individual or entity transferee in order to be able to claim the transferred credit.

(6) The transferee may not claim the credit for a tax year prior to the year in which the transferee pays for the credit. If the applicant has not received the payment when the application is submitted, the tax credit certificate will be dated to reflect that the tax credit period begins as of the date the applicant states payment is expected to be received.

(7) The applicant must submit a complete tax credit transfer application and the required fee to the department. The transfer application must:

(a) Include an affidavit from the project owner affirming that no portion of the tax credit has been claimed and that the project owner has received a cash payment equal to the present value of the credit from the transferee, as calculated under these rules.

(b) Provide power of attorney to authorize the department to confirm with the Oregon Department of Revenue that no portion of the tax credit has been claimed.

(c) Include the original tax credit certificate issued to the applicant.

(8) Upon compliance with this rule and any other applicable requirements, the department will re-issue the tax credit certificate to the transferee.

Stat. Auth.: OL 2011, Ch. 730, Sec. 34 - 51

Stats. Implemented: OL 2011, Ch. 730, Sec. 34 - 51

Hist.: DOE 7-2012, f. & cert. ef. 6-19-12

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Rule Caption: Modification of BETC rules to prohibit increases in tax credits and implement pass-through fees.

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Adm. Order No.: DOE 8-2012

Filed with Sec. of State: 7-10-2012

Certified to be Effective: 7-10-12

Notice Publication Date: 6-1-2012

Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0133, 330-090-0150, 330-090-0160, 330-090-0350

Rules Repealed: 330-090-0130(T)

Subject: These rules prevent applicants that apply to amend existing projects from increasing the amount of tax credit earned. HB 3672 (2011) removed the option to submit new applications for projects under BETC. Without this rule, prior BETC program applicants could seek amendments to increase the size of existing projects and subvert the intent of HB 3672 to stop new activity within the program. In January 2012, the Department of Energy adopted temporary rules covering this provision. In 2012, HB 4079 amended the BETC statute to simplify the sunset date provisions, this rulemaking aligns BETC with this amendment. Additionally, the department held a fee hearing for implementing pass-through fees and a re-inspection fee. This rulemaking repeals the temporary rules and implements permanent rules. Since filing the temporary rules, the department held a stakeholder meeting and fee hearing to provide comments and feedback on the rules. The rules also cover the updating to statutory references.

330-090-0105: ORS 469B update, applicability dates; 330-090-0110: ORS 469B update; 330-090-0120: ORS 469B update; 330-090-0130: ORS 469B update, amendment and extension language; 330-090-0133: ORS 469B update, reference to pass-through; 330-090-0150: ORS 469B update, extension language, pass-through fees, re-inspection fee; 330-090-0160: ORS 469B update and sunset language; 330-090-0350: ORS 469B update.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-090-0105

What a BETC Is

(1) A Business Energy Tax Credit (BETC) for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 but excluding wind facilities with an installed capacity of more than 10 megawatts for which preliminary certification is issued on or after January 1, 2010 are eligible for a tax credit equal to 50 percent of eligible costs. Wind facilities with an installed capacity of more than 10 megawatts, for which preliminary certification is issued on or after January 1, 2010, are eligible for a tax credit equal to 5 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities are eligible for a tax credit of up to \$9,000 and qualifying high performance homes are eligible for a tax credit of up to \$12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment.

(2) The Oregon Department of Energy (Department) must issue a final certificate pursuant to ORS 469B.161 before the credit can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules Chapter 330, Division 90 applies to all BETC applications. These rules apply to all applications pending as of the effective date of these rules.

(3) The Department may also apply these rules to applications currently being reviewed by the Department where a final determination is pending or has been made, when the Department finds that its failure to apply the new criteria set forth in these rules may hamper the Department's efforts to reduce the costs of the BETC program.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, cf. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0110

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 90, the following definitions apply unless the context requires otherwise:

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)" is a vehicle designed to operate on an alternative fuel and includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. AFV does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles or vehicles leased by an investor-owned utility (IOU) to others. For purposes of qualifying for a BETC, gasoline-hybrid AFVs purchased on or after January 1, 2010 must also be designed for electrical plug-in.

(4) "Applicant": An applicant means:

(a) A person who applies for a preliminary certification of a BETC under this section includes:

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification. These entities must follow all procurement processes, including competitive bid, where applicable.

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.

(b) A person who applies for a final certification of a BETC under this section must be the facility owner listed on the preliminary certification.

(c) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.

(d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(5) "Biofuels": A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act,

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend,

(c) Ethanol (CH₃CH₂OH) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007,

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(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and

(e) "E85," a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

(6) "Biomass": An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis. This definition excludes cordwood or wood used for burning in fireplaces.

(7) "Building Automation Controls Facility": Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice and applicable building code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as defined in these rules. Facilities are eligible when energy saving features meet the following requirements and applicable code:

(a) For existing systems within their service life, the following standards apply:

(A) The baseline will be based on the existing system's capabilities in fully functional and operating condition.

(B) Eligible costs will be based on the incremental cost and energy savings of the proposed system as compared to a fully functioning baseline system (savings and costs associated with maintenance and repair activities are not eligible).

(b) For systems beyond service life or new buildings, the following standards apply:

(A) Eligible costs and energy savings will be based on the incremental cost and energy savings between the proposed system and the baseline system.

(B) Only the components of the project that achieve energy savings will be considered eligible. If the component does not achieve energy savings it will not be considered an eligible cost.

(C) The baseline system must incorporate similar technologies to the proposed system. The minimum standard or baseline system will have the following features, plus any additional features required by code: a start/stop program, night setback program, enthalpy control program (economizer), lighting control program (sweep > 5,000 sq.ft.) and a variable flow (10 hp and above).

(8) "Building Code": Applicable state and local codes as defined in ORS 455.010 that are in effect the date the Department receives the application for preliminary certification.

(9) "Building Envelope": That element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.

(10) "Car Sharing Facility": A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(11) "Certified cost": The cost certified in the final certification issued pursuant to ORS 469B.161.

(12) "Combined Heat and Power (Cogeneration)": Means a facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate calculation demonstrating a heat rate of 6,120 Btu/kWh or less (10 percent better than the 6,800 Btu/kWh current standard generation). This facility may be eligible for a 35 percent BETC. Facilities that do not meet this heat rate requirement may still qualify in part for a credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(13) "Commercial New Construction Facility": An energy facility which includes a new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(14) "Commercial Process": An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(15) "Commuter Parking Space" means a facility that is a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(A) Separate from the lease for the business premises.

(B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(16) "Completed Application": Contains all of the information required in these rules and payments under OAR 330-090-0150. All questions on the application must be answered. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, a completed application for final certification must also include a completed, signed pass-through partner(s) agreement form, where the facility owner chooses to transfer the tax credit. Except as provided in ORS 469B.167(2)(c) and OAR 330-090-0133, no application for a final certification in which the facility owner has indicated a choice to transfer the tax credit under ORS 469B.148 is considered complete until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to the pass-through partner.

(17) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director determines the applicant has made all reasonable efforts to operate, including making changes required by the Department.

(18) "Component Parts of Electric Vehicles": means component parts for use solely in Electric Vehicles and not in conventional vehicles. Component parts shall be distinguished by their absence from conventional vehicles and shall not include components that can be used interchangeably in both electric and conventional vehicles. For the purpose of this definition, "conventional vehicle" is a production vehicle that is powered with an internal combustion engine, excluding hybrids.

(19) "Cooperative Agreement Organization": The Department may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by the Department based on the qualifications of the organization and subject to conditions specified in the agreement.

(20) "Cost": The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a BETC. Costs that are incurred to bring a facility up to building code standards or otherwise repair the building in order to install the facility are considered necessary features, and may not be eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

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(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150, and shipping;

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and

(iv) Costs for employee's or contractor's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system) under the American with Disabilities Act.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC review charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;

(F) Routine operational or maintenance costs associated with the facility, other than a transportation services facility, including services, supplies and labor;

(G) Expenses related to training, education or other related expenses;

(H) Expenses that are directly or indirectly offset with federal fee waivers; or

(I) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. The Department may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features. Cost may be limited to incremental cost for conservation applications for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.

(A) In commercial new construction, it is the difference between building to code, or standard practice if this exceeds code, and building to meet or exceed the standards for substantial energy savings.

(B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Eligible facility costs are limited by the following:

(A) Facilities must have a more than one to 15-year simple payback period unless otherwise specified in these rules. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.

(C) Rental dwelling weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic (PV) facilities are limited by the maximum eligible facility cost ratio (MEC), expressed in terms of \$/watt. PV facility eligible cost shall be calculated by multiplying the appropriate rate provided below by the facility size. Once a facility has received preliminary certification the calculated cost shall be effective for 36 months for facilities to be owned by the public and 12 months for all other facilities, from the date of certification. If the Department has not received a complete application for final certification within this time, the cost shall be recalculated based on the rate in effect at that time the final application is submitted. The minimum module performance certified by the manufacturer shall be used to calculate eligible cost. The MEC for a facility rated to produce:

(i) Up to and including 30 kW is \$7.50/watt.

(ii) More than 30 kW, but less than 200 kW, is $-0.01 X$ (system size in kW) + 7.8.

(iii) 200 kW or more is \$5.80/watt.

(E) Costs for a facility, or portion thereof, that has previously received a BETC.

(F) Costs to replace the same baseline facility more than once. The Department may require the baseline facility to be specifically identified and/or permanently decommissioned.

(G) For solar thermal (ST) systems,

(i) The maximum eligible cost (MEC), not including pool heating facilities, shall be calculated using the following formula: $MEC = SOC \times \text{Number of modules} \times \text{Solar Thermal Rate}$. Standard Oregon Conditions (SOC) is based on the OG-100 collector performance data published by the Solar Rating and Certification Corporation (SRCC) on the date the preliminary application is issued. SOC is calculated using a weighted average of the values in the "Mildly Cloudy" (1500Btu/ft²-day) test data using the following equation:

$SOC = 0.1(\text{Category A}) + 0.2(\text{Category B}) + 0.3(\text{Category C}) + 0.4(\text{Category D})$.

(ii) The system size is defined as the SOC multiplied by the number of collectors in the system. The following thermal rates are divided into three tiers based on the system size:

(I) For a system size of less than 100KBtu/day, the rate is \$220/KBtu/day

(II) For a system size that is 100 KBtu/day or greater, but less than 250 KBtu/day, the rate is \$210/KBtu/day

(III) For a system size greater than 250 KBtu/day, the rate is \$200/KBtu/day.

(H) Sustainable building practices facilities, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities, excluding efficient truck technology, are exempt from simple payback requirements.

(I) For renewable energy facility installations, the following are ineligible costs: roofing, re-roofing and engineering for roofing on renewable facilities.

(g) Costs for space conditioning or individual metering of a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be limited to the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(h) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D), purchasing or otherwise obtaining alternative fuel vehicles that are designed to transport five or more passengers, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.

(i) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. The Department may determine the incremental cost as a portion of the facility cost based on similar facilities up to forty percent of the purchase cost.

(j) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by the Department prior to implementation of the limit.

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(B) The utility must provide notification to the customer that there is no minimum when applying directly to the Department, however, payments required by OAR 330-090-0150(3) do apply.

(k) Sustainable building practices facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using data established in Table 1. [ED. NOTE: Table reference is available from the agency.]

(l) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization or federal grants or credits and the BETC may not exceed total costs.

(21) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Department's website.

(22) "Director": The Director of the Oregon Department of Energy or designees.

(23) "Energy Department": The Department of Energy.

(24) "Energy Facility": is defined in ORS 469B.130.

(25) "Facility": is defined in ORS 469B.130 and also includes a Research, Development & Demonstration (RD&D) facility that complies with these rules. A facility must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development.

(a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the following BETC program requirements:

(A) A report demonstrating any mercury-switch thermostats that is replaced or have been recycled and, if so, how.

(B) Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in these rules, of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(e) For a solar photovoltaic facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) Facility must be permitted and in compliance with all applicable building and electrical codes.

(B) All facility equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All facility components must be new (modules, inverter, batteries, mounting hardware).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include all building code required signage and a customer manual.

(F) A customer manual must contain the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed and the wiring design, including wire sizes, and estimated length of wire runs.

(II) Facility site plan that indicates array and inverter location.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(ii) Warranties and installation documentation

(I) Minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for PV modules and inverter

(III) Permit documentation

(iii) Manuals and data sheets

(I) Bill of material listing all primary facility components including part numbers

(II) Inverter owner's manual

(III) Manufacturer data sheets for major components, including but not limited to: inverters, modules, racking/mounting facility, charge controller and batteries.

(G) All facilities must include one or more meters that are capable of recording the facility's total energy production. Meters must be equivalent to American National Standards Institute (ANSI) certified revenue meters with a 0.5 or better accuracy class and, if digital, it must have non-volatile data memory.

(H) Array must be sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer. The temperature-adjusted voltage must remain within the inverter limits at the historical record low temperature for the location in which it is installed.

(I) Wires must be sized to keep the total voltage drop below 2 percent on the DC conductors from the array to the inverter including the existing wire whips on the PV modules, and/or 2 percent on the AC conductors from the inverter to the point of interconnection (total not to exceed 4 percent).

(J) The installing contractor must provide a minimum 24-month full warranty on parts and labor to the facility owner.

(K) The solar array must be used exclusively for business purposes. The applicant must supply a recent utility billing statement and a power purchase or net metering agreement, with a local utility in the name of the business. If the system is being placed on a rental dwelling, a signed rental agreement must be provided and the property must remain a rental property for at least five years. Arrays erected at a location that includes a residence that is not a rental dwelling, must be separately metered from the residence to qualify for a BETC.

(L) Facilities participating in the pilot Feed-In Tariff program under ORS 757.365 are not eligible to receive a BETC.

(f) For a solar thermal facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) The facility must be permitted and in compliance with all applicable building, electrical, and plumbing codes.

(B) All equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All primary facility components must be new (collectors, tanks, controls, pumps).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include a customer manual containing the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed, including a valve chart.

(II) Facility site plan that indicates the location of collectors and storage tank.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(V) Permit documentation.

(ii) Warranties and installation documentation, including:

(I) A minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for collector, tanks, pumps and heat exchanger (if present) and any other components under warranty by the manufacturer.

(III) Permit documentation.

(iii) Manuals and data sheets, including:

(I) Bill of material listing all primary facility components, including part numbers

(II) Facility controller owner's manual

(III) Manufacturer data sheets for major components, including, but not limited to: collectors, tank, controllers, pumps, Btu meter, expansion tank, etc.

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(F) Facility is sized appropriately for the load. The solar savings fraction is not to exceed 0.70 for domestic water heating systems without a means of rejecting heat once the load is met.

(G) Thermal storage is adequate to accommodate daily use pattern. For typical domestic load profiles, this is defined as a minimum of 1.25 gallons per square foot of collector area. For facilities with loads that are coincident with solar generate this storage amount may be reduced if documentation is provided.

(H) All solar storage tanks must be insulated with not less than R15 insulation.

(I) The following standards are for pipe insulation:

(i) Collector loop insulation must be rated for conditions in which it operates. Pipe insulation shall have a maximum K value of 0.25 Btu in/hr. sq. ft. F° and a minimum thickness of 0.75 inches.

(ii) Potable water pipe located outdoors must be insulated to a minimum R-value of 12. Pipe insulation must be protected with a U-V rated tape or pipe jacket. U-V paint is not sufficiently durable.

(J) Anti-convective pipe loop or trap is required on the inlet and outlet of the storage tank. These loops or traps shall have a minimum 8-inch vertical drop to constitute an effective convective heat barrier. Heat trap nipples alone are not reliable in stopping heat migration, and will not meet this requirement.

(K) Install thermometers on collector supply and return pipes. One movable thermometer for two wells is sufficient.

(L) Install a BTU meter capable of measuring total delivered energy on all facilities with standard Oregon conditions rating greater than 250 KBtu/day. A Btu meter must have a designated flow meter and temperature sensors and be located on the load side of the system.

(M) Install a properly sized thermostatic mixing valve on the output of the domestic hot water system to ensure that delivered temperature does not exceed 140°F.

(N) Solar thermal facilities must be installed in compliance with the Oregon Mechanical Specialty Code (Chapter 14 OMSC), the Oregon Residential Specialty Code (Chapter 23), the Oregon Plumbing Specialty Code and all other local regulations with jurisdiction.

(O) Facilities must be designed and installed for complete automatic operation including protection from freeze damage and overheating of collectors.

(P) Pressurized storage tanks must not be allowed to be heated above 180°F.

(g) A facility does not include:

(A) A residential structure or dwelling that is being used for a residence, except for residential structures that are used exclusively as a rental dwelling or that qualify as a licensed homebuilder installed renewable energy facility or high performance home facility.

(B) A renewable energy system or device, other than a homebuilder installed renewable energy facility or high performance home facility, that is placed on or at a residence, except for those used exclusively as a rental dwelling, for the purpose of supplying energy to the residence.

(C) Swimming pools and hot tubs used to store heat.

(D) Wood stoves.

(E) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC rules.

(F) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(G) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(H) Devices or materials which are standard practice.

(I) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(J) Conservation in rental dwellings, for applicants listed in ORS 469B.145(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(K) Other items the Director finds are not allowed under ORS 469B.130 to 469B.169.

(26) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Practices Facility, facility eligible square footage includes all temperature-conditioned floor areas, and one level of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

(27) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.

(28) "Facility Owner": An applicant who purchases and owns a qualified facility.

(29) "Facility Start" prior to erection, construction, installation or acquisition: The earliest date on or after the date of the application that meets one of the following criteria:

(a) A non-refundable deposit will be placed on the facility equipment;

(b) A purchase order will be placed for the equipment;

(c) A contract for the design of the facility will be executed;

(d) A document that obligates the applicant to proceed with a facility will be executed; or

(e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility, or

(f) For a Sustainable Building Practices Facility, the eligible cost date is within 30 days of receiving the LEED registration number, before 50 percent of Design Document for the facility are complete, or prior to receiving building permits for the facility, or

(g) For a renewable energy facility, the applicant shall not be considered to have started erection, construction, installation or acquisition of a proposed facility until excavation or actual physical construction of the renewable energy facility has begun. Eligible costs include all costs as defined in these rules, including costs incurred prior to the receipt by the department of the preliminary certification application related to site and facility development and approval. Applicants who start a facility prior to issuance of preliminary certification shall not be eligible to reapply.

(30) "Federal Grant": Any grant received from the federal government in connection with a facility, includes grants authorized under §1603 of the American Recovery and Reinvestment Act of 2009 (ARRA).

(31) "Final Certification": Final certificate issued after completion of an approved BETC facility.

(32) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(33) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative energy device that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent BETC.

(34) "High Efficiency Combined Heat and Power" (Cogeneration): means a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent is eligible for a 50 percent BETC. The fuel chargeable-to-heat rate calculations shall demonstrate a heat rate of 5,440 Btu/kWh or less (20 percent better than the 6,800 Btu/kWh current standard generation). Facilities that do not meet this requirement may still qualify for a 35 percent tax credit (see Combined Heat and Power) or in part for a tax credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(35) "High Performance Home": Meets the criteria in ORS 469B.130(8) and 469B.139 and is a home that is a dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code with its own space conditioning and water heating facilities and intended for sale to an end-use homebuyer. The facility must meet the following requirements:

(a) Shall be certified through the ENERGY STAR® Homes Northwest program.

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(b) Designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources;

(c) Meet the criteria established for a high-performance home under ORS 469B.139

(d) The building shell shall be constructed to at least the minimum values specified in the following prescriptive path:

(A) Ceilings: $U \leq 0.030$

(B) Walls: above grade $U \leq 0.050$

(C) Walls: below grade $U \leq 0.060$

(D) Floors: above grade $U \leq 0.025$

(E) Floors: on grade, [slab edge] perimeter R-15 min. 2 feet vertical or combined vertical/horizontal — heated slab also requires R-10 foam board under slab.

(F) Windows and glass doors: $U \leq 0.32$ (weighted average). Exception: solar glazing that is part of a passive solar design may have a higher U-factor. Glass doors are doors that contain 50 percent or more glazing.

(G) Glazing area: glazing to floor area ratio ≤ 16 percent (including windows, skylights, and glass doors considered as glazing in the code) for homes larger than 1,500 square feet of conditioned space floor area and < 18 percent for homes 1,500 square feet of conditioned space floor area and smaller.

(H) Shell tightness: 5.0 ACH50 Pa confirmed by blower door test

(e) HVAC system and air ducts shall be incorporated into conditioned space, or eliminate forced-air ductwork.

(f) Space conditioning equipment shall meet one of the following requirements:

(A) Two-stage gas or propane furnace, minimum AFUE 0.92

(B) Gas or propane boiler, minimum AFUE 0.88

(C) Central AC SEER ≥ 14 (if installed)

(D) Ducted heat pump \geq HSPF 8.5, air source, and ground source COP ≥ 3.0

(E) Ductless mini-split heat pump with inverter drive, no incorporated electric backup heat, sized and installed as per ENERGY STAR® Homes Northwest specifications in affect at the time the preliminary application is issued.

(g) A Renewable Energy Facility shall provide on-site energy savings or generation of not less than 1kWh/yr per square foot of conditioned floor space.

(h) Water heating systems shall meet ENERGY STAR® Homes Northwest specifications including secondary water heating equipment that backs up solar domestic water heating facilities.

(i) Includes at least one of the following measures:

(A) Obtain certification through a Green Building program recognized by the Department.

(B) Meet ENERGY STAR Homes Northwest Builder Option Package #2 ventilation specifications through the use of a heat or energy recovery ventilator, except that the sensible recovery efficiency shall be > 50 percent at 32°F and the EUI shall be < 1.5 Watts/cfm.

(C) Use a gas or propane water heater with a minimum EF of 0.80 for primary water heating. The water heater may not also be used for space heating or as the backup to a solar water heating facility to be considered a qualifying measure under this section.

(j) A High performance home may meet a package of alternate shell or HVAC measures that are equivalent to these requirements. Shell measures may be increased to offset HVAC efficiency, however HVAC measures may not be used to reduce minimum shell requirements.

(A) Shell measures shall be a combination of assemblies that together have a total $U \times A$ no higher than a base case home described in section (C)(c), above. Trade-offs will be evaluated according to the thermal trade-off procedure in Oregon Residential Specialty Code Chapter 11, Energy Efficiency, Table N1104.1(1).

(B) Mechanical facilities will be evaluated for comparable annual energy use.

(k) Shall be a detached single-family dwelling unit or a single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.

(36) "Homebuilder Installed Renewable Energy Facility" is defined in ORS 469B.130. The amount of the tax credit for homebuilder-installed renewable energy facilities shall be capped at \$9,000 per high performance home. For purposes of this section, renewable energy resource facilities may include: photovoltaic, solar domestic water heating, active solar space heating, passive solar, and ground source heat pumps. The following requirements must be met:

(a) Photovoltaic: The credit amount is based on \$3 per watt of installed capacity as determined by the Department. Eligible installations have a Total Solar Resource Fraction of at least 75 percent using the Total Solar Resource Fraction (TSRF) method as described in the BETC application. Installations must be verified by a Tax Credit Certified Solar PV Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor for two years.

(b) Solar domestic water heating: The credit amount is equal to \$0.60 per kWh saved annually. The savings are based on values published by the Solar Rating and Certification Corporation (SRCC) plus 100 kWh, which are added to represent Oregon water heating loads. Solar thermal domestic water heating installations must have a Total Solar Resource Fraction (TSRF) of at least 75 percent and be designed to provide no less than 25 percent but not more than 70 percent of the annual domestic water heating load. Installations must be OG-300 certified. Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(c) Active solar space heating: The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by Department staff. Active solar space heating installations must demonstrate a whole building annual energy savings of at least 15 percent to be eligible. Installations that combine space heating and domestic water heating are allowed providing that the solar storage tank is not heated by a backup heat source (e.g. gas or electric water heater). Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(d) Passive solar: The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space. Passive solar design strategies must demonstrate a whole building annual energy savings of at least 20 percent to be eligible. This can be achieved by either meeting the prescriptive requirements for a passive solar home under the Residential Energy Tax Credit or demonstrated with whole building energy modeling and certified by a professional engineer.

(e) Ground source heat pumps: Ground source heat pumps must have a coefficient of performance (COP) of 3.5 or greater. The savings is based on the incremental savings over the energy savings provided by the ground source heat pump with a COP of 3.0. The credit amount is equal to \$0.60 per kWh saved.

(f) Other: Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to \$0.60 per kWh saved. Facilities must be connected to home's main service panel and installers must provide a warranty covering all parts and labor of the facility for two years.

(37) "HVAC Equipment": Heating, Ventilation, and Air Conditioning (HVAC) systems are eligible for a 35 percent BETC.

(a) Eligible combustion equipment (furnaces, boilers, water heaters, and burners) must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating. An exception may be granted if the system efficiency is proven to be higher due to application of a different distribution system (e.g.: radiant systems in high infiltration spaces), control strategies (e.g.: pony boilers), or reduced stand-by losses (e.g.: low-mass boilers).

(b) Heat pumps must have an energy input that is entirely electric and be rated with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows or higher:

(A) Air source heat pumps: 8.5 HSPF

(B) Water source heat pumps: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(2)

(C) Air Conditioning: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(1)

(38) "Hybrid Electric Vehicle": An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A vehicle purchased after January 1, 2010 is not eligible to receive a BETC.

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(39) "Individualized Travel Behavior Change Program": A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(40) "Lease Contract": A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

(41) "Lighting Facility": An energy facility that will reduce the affected lighting energy use by at least 25 percent or by at least 10 percent for a new facility. For non-residential structures, an eligible facility must also report whether there will be any lamps in the facility that will be subsequently replaced and if those lamps will be recycled, how.

(42) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(43) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(44) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(45) "Necessary Feature": A necessary feature does not qualify as an eligible cost and is a feature for which the primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted under the definition of "Recycling Facility" in ORS 469B.130; or

(c) Routine maintenance or repair, such as replacing water damaged insulation, a broken window, dry-rotted wood siding or trim.

(46) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140. This is also referred to as the "pass-through rate."

(47) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(48) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.

(49) "Pass-through Partner": A personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(50) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(51) "Premium Efficient Appliance": An energy facility that is an appliance that has been certified by the Department to have premium energy efficiency characteristics. Residential appliances are listed in the Department's Alternative Energy Devices Systems Directory. Commercial appliances are listed in the Department's Premium Efficient Commercial Appliances Directory.

(52) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(53) "Qualified Transit Pass Contract": is defined in ORS 469B.130.

(54) "Recycling": A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components

thereof, although these processes may be a part of an "Energy Facility" or "Waste to Energy Facility" where they include characteristics required to meet those definitions.

(55) "Recycling Facility": is defined in ORS 469B.130.

(56) "Recycling Market Development Facility": Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

(a) The facility uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(57) "Renewable Diesel": A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and

(c) Has a producer's Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

(58) "Renewable Energy Resource": is defined in ORS 469B.130.

(59) "Renewable Energy Resource Facility": means an energy facility used in the processing utilization, or storage of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(60) "Renewable Energy Storage Device": A facility that enables the storage of energy derived from Renewable Energy Resources as defined in ORS 469B.130. To qualify as a renewable energy storage device a facility does not need to be directly connected to a renewable energy resource, but a beneficial relationship must be demonstrated between the energy output of the resource or resources and the charge and discharge capabilities of the facility. A Renewable Energy Storage Device includes, but is not limited to, batteries or similar devices used to provide propulsive energy in electric vehicles. The storage device may be designed to store energy for transmission lines provided that the transmission lines serve, at least in part, renewable energy resources.

(61) "Rental Dwelling": means any property that meets the requirements of the state building codes and contains a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.

(62) "Rental Weatherization": means energy conservation and efficiency measures that improve the energy efficiency of a rental dwelling. In order to qualify for a BETC, an applicant must meet requirements (a) through (c):

(a) An applicant must be planning to perform a minimum of two weatherization measures on the rental dwelling if one of the measures is to replace windows on the rental dwelling. Eligible second measures include one of the following:

(A) Adding floor insulation to R-21,

(B) Attic/ceiling/roof insulation to R-38 or cavity fill,

(C) Wall insulation to R-13 or cavity fill,

(D) Replacing exterior doors to R-5,

(E) Duct sealing and testing by a contractor certified by the Residential Energy Tax Credit program, or

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(F) An applicant can demonstrate that the measures (A) through (E) above have already been completed by providing an energy audit from the Energy Trust of Oregon or the applicant's utility, if unavailable the Department may approve another type of energy audit.

(b) Prior to being eligible to receive a BETC for installing a renewable facility on a rental dwelling, all standard weatherization measures, including roof insulation to a minimum of R-38, floor to minimum of R-21 and walls to a minimum of R-13 (where achievable on outside walls where no insulation is present) must be completed. An applicant shall provide appropriate documentation, such as an energy audit as described above in section (a)(F), to verify standard weatherization measures.

(c) For purposes of meeting the requirements of ORS 469B.151, when a utility audit is not available, a vendor-provided audit demonstrating substantial savings and approved by the Department will suffice. A self-audit based upon the following list may be substituted when accompanied by U-values, areas, and other appropriate general information regarding the measures, including:

(A) Caulking, weather-stripping and other prescriptive actions to seal the heated space and ducts in a dwelling;

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs and associated ventilation;

(C) Insulation of outside walls to a nominal R-13 if achievable in areas where no insulation is present, of unfinished walls adjacent to unheated areas to R-21 if achievable in areas where no insulation is present, and of finished walls adjacent to unheated areas to R-11 if achievable in areas where no insulation is present;

(D) Insulation of floors over unheated spaces to at least R-25 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

(E) Insulation and sealing of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least 10 feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;

(G) Double-glazed windows (including sliding doors) with a U-value of 0.30 or lower, when replacing single-glazed windows;

(H) Insulated exterior doors with a U-value of 0.20 or lower (R-5 or higher);

(I) Programmable thermostats; or

(J) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Department's Residential Energy Tax Credit technician certification program.

(d) If an applicant undertakes envelope measures, the following requirements apply:

(A) Replacement windows must have a U-value of 0.30 or less for residences.

(B) U-values must be 10 percent better (lower) than code requirements for commercial.

(C) Insulation that exceeds code requirements or when not required by code is an eligible measure if substantial savings and economic criteria required in the OARs are met.

(63) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (f):

(a) A facility that is not standard practice and that is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized. BETC RD&D applicants' total lifetime project costs will be determined for a defined period established at the time of the initial application and will be capped at \$20,000,000 for renewable energy RD&D and high efficiency CHP RD&D and \$10,000,000 for all other RD&D project types. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs;

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment; or

(F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent BETC; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.

(d) Eligible costs for a Research, Development or Demonstration facility may include:

(A) Engineering, design and administrative costs

(B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:

(i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.

(ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(C) The following costs related to demonstration model(s) may be considered eligible:

(i) Materials for the demonstration model(s).

(ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).

(iii) Testing and monitoring the demonstration model(s).

(D) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110 (20)(f).

(E) Other eligible costs defined by Oregon Administrative Rule.

(e) Ineligible costs for a Research, Development or Demonstration facility may include:

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.

(B) Other ineligible costs defined by Oregon Administrative Rule.

(f) A Research, Development or Demonstration facility is not eligible to receive a BETC when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.

(64) "Residential Dwelling": means a structure or the part of a structure that meets the requirements of the state building codes and is used as a permanent home, residence or sleeping place by one or more persons who maintain a household or by two or more persons who maintain a common household. A BETC may not be claimed for a renewable energy facility located in, adjacent to, or on a one or two family home unless the home is used exclusively as a rental dwelling.

(65) "Residential Energy Tax Credit Qualifying Equipment": means equipment that qualifies under the standards and rules for the Residential Energy Tax Credit from the Department. The equipment is eligible for the BETC in either of the two following methods:

(a) A facility that consists solely of equipment that is on the qualifying equipment list at the time of the application submittal may apply as outlined in the Oregon Administrative Rules 330-090-0105 using operating schedules, capacity, efficiency and cost information to prove qualification; or

(b) The facility, made up of qualifying equipment may also effectively qualify what would otherwise be an eligible Residential Energy Tax Credit facility through the BETC Program by using the following formula. Residential tax credit amount (from qualifying appliance list) ÷ 0.35 = BETC eligible cost.

(66) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(67) "Service Life": Equipment service life is as established in the 2007 edition of the American Society of Heating, Refrigeration and Air

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Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook or as determined by the Director for equipment not rated by ASHRAE. The Department may prorate the eligible project cost based on the remaining service life of the equipment. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(68) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(69) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(70) "Substantial Energy Savings": Means that the Department has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building practices facility as defined under "Sustainable Building Practices Facility" of this rule; or

(d) The facility measures are measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(71) "Sustainable Building Practices Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:

(a) Is rated and certified LEED-NC™, LEED-CS™, or LEED-CI™ under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party. In addition, a facility must:

(A) In achieving its LEED™ rating, the facility must earn at least two points under Energy & Atmosphere Credit 1 (Optimize Energy Performance).

(B) In achieving its LEED™ rating, the facility must earn at least one point under Energy & Atmosphere Credit 3 (Enhanced Commissioning).

(b) Each LEED-NC™ or LEED-CS™ facility must calculate and report the building's annual solar income in Btu (not the site income). The calculation must account for the contribution from each face (orientation with surfaces exposed to direct sunlight) and must take into account any existing or reasonably expected shading (by other buildings or vegetation, e.g.) of these surfaces. Calculations may ignore such things as rooftop or wall-mounted mechanical facility components.

(c) Facilities using on-site renewable energy production technologies such as photovoltaic or wind technologies may treat these elements as a separate renewable energy resource facility for tax credit purposes, provided that any points earned for such features in the LEED™ rating are not required to achieve the rating on which the Sustainable Building facility credit is to be based. In cases where subtracting such points would result in a lowering of the LEED™ rating (e.g. from Gold to Silver), the tax credit will be awarded on the basis of the lower rating. The rating point total, net of renewable generation credits, can never be less than that required for a Silver rating.

(72) "Total Cost": The eligible cost of a facility not limited by ORS 469B.142.

(73) "Transportation District": A transportation district included in ORS 184.675(7).

(74) "Transportation Facility": A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school,

work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

(a) Telework defined as working from home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes the purchase or cost of the vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility. Applicants must subtract any employee contributions for transit passes from eligible costs.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Maximum eligible costs of \$800 include purchase of bicycles and equipment used to store bicycles. Accessory items, such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or nonprofit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs. Applicants must subtract any fare-box contributions from eligible costs.

(j) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility sur-

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veys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(k) Vanpool Program is defined as a facility that is an employer-sponsored or organization sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but do not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.

(l) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.

(A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served.

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.

(m) The purchase of efficient truck technology for trucks and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011. Eligible efficient truck technology, such as an auxiliary power unit (APU), must be recognized as a verified technology by the U.S. Environmental Protection Agency (USEPA) SmartWay Transport Partnership to potentially qualify.

(A) Eligible projects must meet the following requirements:

(i) Retrofit a truck or add to a newly manufactured truck one or more USEPA SmartWay efficiency measures. With a newly manufactured truck, a new trailer with one or more SmartWay efficiency measures may also be included with this project. The new trailer and newly manufactured truck must independently qualify for tax credits; and

(ii) Eligible vehicles must demonstrate Oregon registration with a current Cab Card as part of the Application for Preliminary Certification by:

(I) Commercial (Oregon-only registration operated solely in Oregon) with a red Oregon-only commercial "YC" plate from the Oregon Motor Carrier Transportation Division (MCTD); or

(II) International Registration Plan (IRP), also referred to as Apportioned registration, with a red Apportioned "YA" plate from the Oregon MCTD. For IRP vehicles, eligible facilities must meet the following requirements as part of the application for preliminary certification:

(II-a) Provide the two most recent calendar year IRP billing notices that document the percentage of a vehicle's annual mileage that was driven in Oregon.

(II-b) For proposed eligible facilities that have no recent calendar year IRP billing notice documentation, provide a signed project owner statement indicating the anticipated percentage of miles that will be driven in Oregon over the next two years.

(B) Applicants that can document that 15 to 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit equal to 35 percent of 71.5 percent of the facility's otherwise eligible certified costs.

(C) Applicants that can document that more than 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit of 35 percent of the facility's eligible certified costs.

(D) Proof that the applicant has a sufficient nexus with the state of Oregon. This includes a dedicated location in Oregon for maintenance, dispatch, and monitoring of facilities.

(E) The facility's simple payback period must be between more than one and fifteen years.

(75) "Transportation Provider": is defined in ORS 469B.130.

(76) "Transportation Services Contract": is defined in ORS 469B.130.

(77) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(78) "Vanpool Program": means a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(79) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(80) "Waste-to-Energy Facility": means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.

(d) The facility does not divert materials from a higher value use.

(e) The facility has an acceptable energy balance as determined by the Director.

(81) "Wind Facility": means a facility that converts wind power into another energy resource.

(82) "Year": Calendar year.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0120

Preliminary Certificate Application Requirements for a BETC

(1) Eligible facilities

(a) The Department may issue only one BETC for each separate and distinct facility under these rules. The following facilities, as further defined in these rules, are eligible for a BETC: An energy facility, recycling facility, rental dwelling weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a home-builder-installed renewable energy system or a research development & demonstration facility that complies with these rules.

(b) A proposed facility must meet applicable codes and standards, must include a warranty and must be serviceable locally.

(2) Required information

(a) Persons requesting a BETC shall apply on the Department-approved form for a preliminary certificate. In addition to the information required in ORS 469B.145, the applicant shall provide the following information:

(A) The name, address, and phone number of the applicant, owners of the facility, and the developers of the project.

(B) The applicant's federal tax identification number or social security number which may be shared with the Department of Revenue to facilitate the administration of the state tax law.

(C) Proposed facility construction and operational start and finish dates. A facility's start date is the date that the project applicant financially commits to the project. Financial commitment includes, but is not limited to: making a down-payment or deposit, signing a contract with a vendor, ordering material or equipment, beginning construction or installation.

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(D) The proposed facility location within the geographical confines of Oregon or in the case of an alternate fuel vehicle demonstrated intent that the vehicle will be titled in the State of Oregon.

(E) Information demonstrating that the proposed facility will comply with or have a variance from the land use laws of the city or county where the facility will be located;

(F) Information demonstrating that the proposed facility will comply with all other local, federal, and state laws, including but not limited to the following:

(i) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Proof of permits, licenses, or exemptions from DWR and the FERC must be submitted to the Department before a facility is eligible to receive final certification. Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power and Conservation Council's Fish and Wildlife Program.

(ii) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(iii) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).

(G) A list of appropriate authorizations for all work performed including but not limited to appropriate licenses, permits, or other authorizations that are required by state or local jurisdiction for the facility.

(H) Information demonstrating the intended operation, maintenance and use of the facility, including but not limited to, where appropriate, the amount and type of jobs potentially created or eliminated in the construction, installation and operation of the facility in Oregon, the benefits of the facility with regard to overall economic activity in this state, the amount of projected energy saved, generated or transmitted and a demonstrated intent that the facility will be maintained and operated for at least five years after the facility is operational. Except that, as a condition of the preliminary and final certificate, the following facilities must remain in operation for one year: Tele-working equipment, transit passes, transportation services, incentive programs, car-share programs and individualized travel behavior change programs, and van-pool programs. If an applicant expects that a facility not listed in this subsection will operate less than five years, the applicant may submit a request for approval of the shorter operating period as part of their application for preliminary certification. This request shall include information describing the proposed facility and supporting the proposed operating period. The Director will determine whether to approve the shorter operating period and may include conditions, reductions or other limits on any potential tax credits.

(I) A declaration from the applicant that all property taxes for the facility have been paid and there are no delinquent property taxes associated with the facility.

(J) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130 shall provide all information required as part of the tiered priority system under OAR 330-090-0350.

(b) The Department may request additional information from the applicant in order to determine whether multiple applications have been made for the same facility. The department will make its determination based on the following:

(A) All applications under consideration will be reviewed against other current applications, facilities that have received preliminary certification and facilities that have received final certification within the past 12 months. Further review shall be given to applications which:

(i) when combined exceed the annual limit for a tax credit found in ORS 469B.142.

(ii) are individually below the threshold for one year tax credit found in ORS 315.354, but if combined exceed this threshold; or

(iii) when combined, result in assessment within a different category or tier, or against different criteria or cost allowances.

(B) Applications for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130 will be determined to be a single facility, despite the number of applications, owners or construction phases, if three or more of the following apply:

(i) The facility is located on one or more adjacent parcels of land or parcels;

(ii) The facility has been recognized in a license or permit as a single facility by a federal, state, county, city or local authority including, but not limited to siting council, state or local boards or commissions, or the facil-

ity has obtained or applied for siting or land use approval and other applicable permits, licenses or site certificates as a single facility or on a single application;

(iii) When the facility is designed to generate energy, the construction of the facility is performed under the same contract with a general contractor licensed under ORS 701 or multiple contracts entered into within one year of each other with one or more general contractors licensed under ORS 701. If facilities will be completed in phases over time, the applicant must demonstrate that each of the phases of the facility would independently qualify as an eligible facility and that each phase of the facility is not interdependent in purpose or the manner in which it will be owned, financed, constructed, operated, or maintained or the facilities or phases of the facility will be determined to be one facility for the purposes of these rules;

(iv) The facility owners have entered into or expect to enter into agreements to share project expenses, personnel, capital investments including generating equipment or other resources related to the facility;

(v) The generating equipment for the facility and the related facility was purchased by the same person or persons who own or operate the facility or have taken action under any of the above factors;

(vi) A facility is connected to the grid through a single connection or multiple connections when there is a shared net metering, power purchase or other applicable transmission agreement; or

(vii) Other factors or considerations which demonstrate that the facility is not a separate and distinct facility based on its construction, operation, maintenance and output.

(C) Applications other than those described in subsections (B) will be considered a single facility if three or more of the following apply:

(i) shared ownership of facilities,

(ii) shared location of facilities,

(iii) project permits are issued to a common entity or at the same time

or

(iv) a shared contract to construct the facilities.

(c) Anticipated capital expenditures and other costs as defined in these rules for the erection, construction, installation or acquisition of the proposed facility, its expected operational life, and its simple payback as defined in ORS Chapter 469B and these rules.

(d) Information demonstrating anticipated substantial energy savings or a description of products that will result from the facility and how those products will result in substantial energy savings.

(e) For a proposed renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.

(A) For a solar energy facility: A sun chart and solar insolation data for the site. Facilities must have a Total Solar Resource Fraction of at Least 75 percent.

(B) For a wind energy facility:

(i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or

(ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or

(iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or

(iv) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(v) In the event that estimated wind resource data are used as described under section (iii) and (iv) above, the project owner shall provide to the Department not later than 14 months after the start-up date, one year of actual monthly energy production data and, if available, actual monthly average wind speed data at wind energy facility's site.

(vi) Proposed equipment must meet the following:

(I) Each proposed model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or

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(II) Proof that the proposed wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSERDA) in effect on April 30, 2010; or

(III) The proposed manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).

(vii) The Department reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented, lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generation.

(C) For a geothermal energy facility (except a heat pump system): A plot of well temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of actual or predicted average monthly stream flows. If flows are predicted, describe the method used to predict flows.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy requirements for a period of a minimum of five years.

(F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.

(G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 grams per hour for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(f) The payment required by OAR 330-090-0150(3).

(g) For proposed alternative fuel vehicle facilities: proof that the proposed vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(h) For proposed alternative fuel vehicle facilities: the proposed number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(i) For proposed alternative fuel fueling station facilities: a description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(j) For proposed transportation facilities: required documentation for each category specified under the definition of "Transportation Facility" in these rules.

(k) For a proposed waste-to-energy renewable energy resource facility that meets the definition of waste stream includes the anticipated percentage of waste stream product to be recovered and a remediation plan for anticipated emissions and byproducts.

(3) Standards When Reconstructing a Facility: If a facility is reconstructed and an application for preliminary certification is filed seeking a tax credit on the reconstructed facility, any tax credit certified for the reconstructed facility will be reduced by the amount of the original tax credit remaining for the original facility.

(4) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0130

How the Oregon Department of Energy Processes a BETC Application

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the BETC final certificate.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department. Applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources as defined under ORS 469B.130, must be submitted under the tiered priority system described in OAR 330-090-0350 and include any additional requirements under this section.

(c) A facility owner planning to use a Pass-through Partner will select the pass-through option on the Application for Preliminary Certification.

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director.

(e) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

(2) Pre-Approval of Preliminary Certifications: The Director has pre-approved preliminary certifications for the following facilities that the Department has reviewed and determined to be otherwise qualified under these rules:

(a) Alternate energy devices qualifying for a tax credit under the Residential Energy Tax Credit Program, OAR 330-070-0010 through 330-070-0097, for which the Department has determined qualified costs, energy savings, and eligible tax credits. A facility owner may file for a preliminary certification to present documentation supporting different determinations for review and approval.

(b) Pre-qualified hybrid-electric vehicles.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(1) and (2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a BETC up to the maximum amount of certifiable costs under ORS 496.200. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0133(4).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a preliminary certification. If an application is amended, the

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time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) Preliminary Certification After Start of a Facility:

(a) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0120 and OAR 330-090-0130(5)(b).

(b) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

(5) How Preliminary Certification Can be Revoked: The Director may alter, condition, suspend, deny or revoke a preliminary certification for a reason listed in this section

(a) A facility is not completed and a complete final certification application received before 1,095 days (3 years) after the preliminary certification was issued or a further 730 days (2 years) if an extension has been approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Department before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(d) Any other reason allowed by ORS 469B.157(3).

(6) Amendments to Preliminary Certifications: To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.

(a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, the location, or other matters that demonstrate substantial change in the project's scope. The request must be accompanied by the appropriate fee.

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the Director, the department will provide the applicant a written notice relating to the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no changes will be made to the preliminary certification.

(c) Preliminary certifications issued for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469B.130, shall not be eligible for consideration of amendments other than those listed below in (A) through (C). An eligible amendment cannot change the tier within which the application was reviewed.

(A) Equipment capacity within 10 percent of the approved specification;

(B) Amendments to the facility that do not result in an increased potential tax credit amount, but increase output or otherwise improve the facility; or

(C) Changes in ownership.

(d) Amendment requests received after January 13, 2012, will not be approved if the amendment would result in an increased tax credit.

(e) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.

(f) The amendments to ORS 315.354, 315.356 and 469.220 [renumbered 469B.167] by Oregon Laws, 2011, Chapter 693 do not provide a basis for applicants to obtain amendments to certifications issued under ORS 469.210 [renumbered 469B.157] or 469.215 [renumbered 469B.161].

(7) If the facility does not proceed: The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a Pass-through Partner must complete and file the Pass-through Option Application form supplied by the Department.

(b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner pays the pass-through fee and provides evidence to the Department that the owner has received the pass-through payment in full.

(9) Extension of Preliminary Certification: Applicants who have not previously extended their certification and whose preliminary certification is anticipated to expire prior to completion of the facility may apply for an extension of an additional two years from the current expiry of the preliminary certification.

(a) Applicants must submit a written request to the department, accompanied by the appropriate fee, describing the progress made in developing the facility since the department issued the preliminary certification and verifying that the project will be developed in accordance with the initial approval, within two years from the current end of the preliminary certification and prior to the sunset date of the program. The request shall include the new proposed facility completion date. Requests may be made no earlier than 6 months prior to the expiration of the existing preliminary certification.

(b) If an applicant wishes to make changes other than to the completion date, the applicant must submit a request for amendment as described in ORS 330-090-0130(7).

(c) If a request or original application does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185469B.130 to 469.225469B.169 and any applicable rules or standards adopted by the Director the department will provide the applicant a written notice specifying the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no extension will be made to the preliminary certification expiration date.

(d) The department will review the previously approved application against current statute and rules. Within 60 days after the department receives the extension request, the Director will decide if the request complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the extension and provide written reasons for the denial.

(10)(a) Final Certification Review Process and Application: An application for final certification must be filed after the facility is completed as defined in these rules.

(b) An application for final certification must include:

(A) Evidence to demonstrate that:

(i) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469B and the rules adopted thereunder;

(ii) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval; and

(iii) The facility will be maintained and operated for at least five years after the facility is placed into operation, or a lesser period if approved and specified on the preliminary certification.

(B) An account of the facility costs, including prorated costs.

(i) If facility costs are less than \$50,000, the account may be records of facility costs paid or incurred based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required under these rules unless required by the Director to supply verification from a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner. If an applicant has an outstanding binding contract or loan agreement, the account shall demonstrate that payments on contract or loan are not in default; or

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(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules. If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default.

(iii) The application must include information regarding any federal grants applied for or received in connection with the facility including, without limitation, the grant(s) applied for, the date of each application, the amount of the requested grant(s), when applicant expects to receive notice of grant approval or denial and any other information that may be required by the director. Final total costs will be reduced dollar for dollar by any federal grant amount received by a taxpayer in connection with the facility.

(C) For a Sustainable Building Practices Facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the rules and method of calculation will be accepted in lieu of facility cost receipts.

(D) Proof the facility is completed and operating.

(E) If the facility is leased or rented, a copy of the lease or rental agreement.

(F) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(G) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and

(H) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate

(I) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0133

How ODOE Processes a Final Application

(1) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.

(a) Applications shall be considered received for the purposes of ORS 469B.167 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the department on the complete application containing all of the required information shall be considered the received date.

(A) When a facility owner chooses to transfer the tax credit under ORS 469B.148, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department. Except for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million, any application in which the facility owner has indicated a choice to transfer the tax credit under 469B.148 is not a "completed application" until the Department receives both the completed final certification application form from the

facility owner, the pass-through fee and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner. The receipt of the completed application by the Department begins the certification period, as provided in 469B.167.

(B) As provided in ORS 469B.167(2)(c), a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469B.161 after January 1, 2010, a final certification application shall be considered complete without the identification of a transferee for purposes of ORS 469B.148 or 469B.154.

(C) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18 months from the date the first pass-through partner agreement form was received by the Department.

(D) For purposes of administering the sunset of the program, the Department may issue a Final Certificate to a facility owner who previously indicated a choice to transfer a tax credit to a pass-through partner under ORS 469B.148, if the Department has not received a completed application that includes the pass-through fee and the signed pass-through partner agreement form at least sixty days prior to the sunset date for the BETC program provided under 315.357(1)(c), where the facility owner must receive final certification under 469B.161 before January 1, 2013. The Final Certificate will be issued to a facility owner if the only pieces causing the application for final certification to be incomplete is the pass-through partner(s) agreement form and pass-through fee.

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification.

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

(d) For efficient truck technology facilities the department may, upon the request of the applicant, issue no more than two final certificates for each preliminary certification, up to the amount of the preliminary certification.

(2) Basis for Denying Tax Credit Benefits

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469B.161(4).

(d) The Director may deny a final certificate if:

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;

(C) The applicant misrepresents or fails to construct or operate the facility;

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or

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(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469B and the rules adopted thereunder.

(3) Basis for Revoking Tax Credit Benefits

(a) The Director may revoke certificates as provided in ORS 469B.169 and ORS 315.354 (5). For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:

- (A) The facility has been moved;
- (B) Title to the facility has been conveyed;
- (C) The facility is subject to or part of a bankruptcy proceeding;
- (D) The facility is not operating; or
- (E) The term of a leased facility has ended.

(c) Pursuant to ORS 469B.169, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.

(d) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that facility. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469B.148, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(e) The revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469B.148, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(4) Sale or Disposition of the Facility after Final Certification:

(a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as of the date of the disposition of the facility, unless the BETC for the facility has already been transferred under ORS 468.206.

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-090-0130(10) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354(5).

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amendment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.

(6) Inspections: After an application is filed under ORS 469B.145 or ORS 469B.161 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11; DOE 6-2011, f. & cert. ef. 9-29-11; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 10-2011, f. & cert. ef. 11-30-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) \$20 million in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility, not including wind facilities with an installed capacity of more than 10 megawatts;

(B) \$7 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2010.

(C) \$5 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification during 2011.

(D) \$3 million in maximum eligible facility costs for a wind facility with an installed capacity of more than 10 megawatts issued a preliminary certification on or after January 1, 2012.

(E) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home BETC subject to subsection (b).

(b) A final certification for a BETC will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.

(2) Return of Review Charge for Returned Incomplete Applications: This section does not apply to applications subject to the tiered priority system under OAR 330-090-0350. If under OAR 330-090-0130, the Department does not accept and returns an incomplete application for preliminary certification, the Department will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469B.164 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement the Department has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to the Department, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification.

(A) Applicants within tier two or three of the tiered priority system under OAR 330-090-0350 shall include with their initial application a payment to the department of \$500 for the costs of step one. Applicants who are notified that their application is approved for step two will be required to submit an additional fee as calculated under (B) prior to review.

(B) For all facilities except Sustainable Building Facilities or facilities qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost, or \$30 whichever is greater. The maximum payment amount is \$35,000.

(C) For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules.

(D) For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of up to 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification application was received by the Department. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(A) Denial of an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) Requests for amendments or changes to a preliminary certification must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project. If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (3)(a) of this rule.

(d) Requests for extension of a preliminary certification under ORS 469B.145 must be accompanied by a payment. The payment is the lesser of \$300 or the preliminary certification application fee for the project.

(e) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(f) The payment is a required part of a completed preliminary certification application per 330-090-0130, except for facilities that qualify under 330-090-0130(2). Preliminary certifications will only be issued if the application is complete. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of the Department determines are incurred solely in connection with processing the application. The applicant will be

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advised of any additional costs the applicant must pay before the costs are incurred.

(g) If the Department is unable to complete a scheduled inspection due to actions by the applicant, the Department will require the applicant to pay a re-inspection fee of \$400 before rescheduling the inspection.

(4) Cost of Pass-through: Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department can issue a tax credit certificate.

(a) If the department assists the applicant in obtaining a pass-through partner or partners, the fee for that assistance is 0.25 percent of the tax credit amount, up to \$25,000 maximum, but no less than \$100 minimum.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$100 per tax credit certificate issued.

(5) Cost of Transfer: Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee, the fee for that service is \$200, plus \$100 per tax credit certificate issued. In this section, a transferee means an individual or business that pays the pass-through amount to an applicant, that previously was issued the tax credit certificate pursuant to OAR 330-0-90-0133(1)(a)(D), and receives a re-issued tax credit certificate in place of the original applicant. The transfer must occur within 12 months of the issuance of the original tax credit certificate.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 7-2011, f. & cert. ef. 10-25-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0160

Sunset of the Business Energy Tax Credit Program

(1) ORS 315.357 contains the sunset of the Business Energy Tax Credit Program. Applicants must meet the deadlines that apply to their project:

(a) Applicants with a preliminary certification that are unable to demonstrate evidence of beginning construction before April 15, 2011 must receive final certification before January 1, 2013. The Director does not guarantee that a complete final certification application received on or after November 1, 2012 will be processed before January 1, 2013.

(b) Applicants with a preliminary certification that are able to demonstrate evidence of beginning construction before April 15, 2011 must file a complete application for final certification on or before the earlier of the expiration of the preliminary certificate or July 1, 2014.

(2) Applicants with a preliminary certification may apply to the department to demonstrate that construction of the facility began before April 15, 2011.

(a) An application must include at least these items:

(A) A brief update on the progress of the facility.

(B) A construction schedule showing the anticipated completion date.

(C) A statement that the facility will be completed as approved in the preliminary certification.

(D) Evidence of beginning construction, including but not limited to:

(i) A copy of an approved building, grading or other permit issued for the facility, dated prior to April 15, 2011.

(ii) Evidence of site-specific construction activity, for the period on or after the later of preliminary certification or building permit approval and before April 15, 2011.

(iii) Evidence of facility-specific construction activity, for the period on or after preliminary certification and before April 15, 2011.

(b) Evidence of site-specific construction activity may include, but is not limited to:

(A) Paid invoices for completed construction activity.

(B) Timesheets for construction activities linked to the facility site.

(C) Paid rental documentation for construction equipment.

(D) A written report from the project engineer or installer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(c) Evidence of facility-specific construction activity may include, but is not limited to:

(A) Paid invoices for facility-specific assembly or manufacturing activity.

(B) Timesheets for assembly or manufacturing activities linked to the facility.

(C) A written report from the project engineer or manufacturer signed under penalties of perjury describing the work that had commenced before April 15, 2011.

(d) Applications must be received by the department before October 1, 2012.

(e) The Department will review the provided information and respond to the application within 60 days. As part of its determination, the department may request additional information from the applicant and may perform inspections.

(A) The department will issue a written acceptance letter to applicants who are able to demonstrate evidence of beginning construction. The acceptance letter will state the date by which the applicant must receive final certification to be allowed a credit under ORS 315.354.

(B) The department will issue a letter to applicants who have not provided sufficient evidence of beginning of construction providing reasons for the denial.

(3) Transfer of tax credits issued to an applicant pursuant to OAR 330-90-0133(1)(a)(D). In this section, a transferee means an individual or business that pays the pass-through amount to an applicant that has been issued the tax credit certificate pursuant to 330-0-90-0133(1)(a)(D), and receives a re-issued tax credit certificate in place of the original applicant.

(a) An applicant who has been issued a tax credit certificate pursuant to OAR 330-90-0133(1)(a)(D) may transfer the tax credit to an eligible transferee through the department process provided by these rules, provided the transfer occurs within 12 months of the issuance of the original tax credit certificate.

(b) If an applicant uses any portion of the tax credit it may not be transferred, in accordance with ORS 469B.167(3).

(c) The department will not provide assistance in locating a transferee.

(d) A tax credit certificate may only be re-issued once, upon a transfer from the applicant to the transferee.

(e) A tax credit certificate may be re-issued in the name of the individual or entity transferee only.

(f) The transferee may not claim the credit for a tax year prior to the year in which the transferee pays for the credit.

(g) The applicant holding the tax credit certificate must submit a complete tax credit transfer application and the required fee to the department. The tax credit transfer application must:

(A) Include an affidavit from the applicant holding the tax credit certificate affirming that no portion of the tax credit has been claimed and that the applicant has received a cash payment equal to the present value of the credit from the transferee, as calculated under these rules.

(B) Provide power of attorney to authorize the department to confirm with the Oregon Department of Revenue that no portion of the tax credit has been claimed.

(C) Include the original tax credit certificate issued to the applicant.

(h) Upon compliance with this rule and any other applicable requirements, the department will re-issue the tax credit certificate to the transferee.

Stat. Auth.: ORS 469.040 & 469.165, 469.185-469.225, OL 2011, Ch. 730(HB 3672)

Stats. Implemented: OL 2011, Ch. 730(HB 3672)

Hist.: DOE 10-2011, f. & cert. ef. 11-30-11; DOE 8-2012, f. & cert. ef. 7-10-12

330-090-0350

Tiered Prioritization System for Renewable Facilities

(1) Applicability: The tiered priority system applies to applications for facilities that use or produce renewable energy resources, or are listed as renewable energy resources, as defined under ORS 469B.130.

(2) Process: The department will issue a BETC Opportunity Announcement (OA) detailing the availability of potential tax credits for renewable facilities, the criteria to be applied in selecting facilities for allocation of available potential credits, and soliciting applications within a set time period. Applications will be reviewed within tiers, differentiated by facility cost. The process and level of review differ between tiers as specified in these rules and the OA. The requirements for issuance of preliminary and final certifications within these rules will apply to all applications allocated potential tax credits through the tiered priority system.

(a) Tier one application acceptance and review will be completed on an ongoing basis subject to the tax credit limitations published by the department. Complete applications will be processed in the order they were

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received and may be rejected once the department has received applications totaling all available credits for this tier.

(b) Tier two application review will consist of an OA and three review steps:

(A) OA: The department will issue an OA and collect applications.

(B) Step one: Applications will be reviewed against initial standards, which will include criteria that will ensure those that advance are complete and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.

(C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional non-refundable fee.

(D) Step three: Technical review of proposed facilities will be completed, allocations of potential tax credits confirmed and announced, and preliminary certifications issued.

(c) Tier three application review will consist of an OA and three review steps:

(A) OA: The department will issue an OA and collect applications.

(B) Step one: Applications will be reviewed against initial standards specified within the OA to include ensuring those that advance are complete, and that the facility can be completed prior to the program sunset. The fee for step one is non-refundable. Applications that do not proceed to step two or three may reapply during a future OA.

(C) Step two: Applications will be reviewed for priority against standards and criteria detailed in the OA and initial allocations of available potential tax credit will be made. Applications that proceed to step three will be required to submit an additional fee.

(D) Step three: Technical review of proposed facilities will be completed and allocations of potential tax credits confirmed prior to the issuance of a preliminary certification. If the department determines that it does not have the appropriate resources available to conduct the review, the department may notify the applicant that the department intends to use a third party to conduct the technical review. If a third party is used, the applicant will be required to submit payment to the department approved third party for the review.

(3) Tier Boundaries:

(a) Tier one shall consist of applications with projected facility cost less than \$500,000.

(b) Tier two shall consist of applications with projected facility cost equal to or greater than \$500,000 but less than \$6,000,000.

(c) Tier three shall consist of applications with projected facility cost equal to or greater than \$6,000,000.

(d) For the purposes of determining tier assignment, facility cost shall not be limited as defined in ORS 469B.142.

(e) Applicants may apply for less than the maximum eligible potential tax credit for their project, this shall not change the tier within which the application is reviewed.

(4) Allocation of tax credits between tiers and application periods

(a) The department shall announce the allocation of potential tax credits. The OA will specify the distribution of funding for the appropriate tiers and the amount allocated to the current application period. The department will continually monitor the rate of allocation of potential tax credits to ensure the total amount of potential tax credits does not exceed the limits provided in Oregon Laws, 2010, Chapter 76, Section 2.

(b) If no applications are received within an application period for any tier, the allocated potential tax credits for that period and tier will be reallocated by the department. If the total request from all complete applications received for a period and tier is less than the allocated potential tax credits, the department will review all applications to determine that they meet any applicable standards prior to allocating potential tax credits, and reallocating remaining potential tax credits. If allocated potential tax credits remain but are insufficient to satisfy the request of the next applicant, the Director may offer a reduced tax credit amount or reallocate the remaining potential tax credits.

(c) Potential tax credit amounts that are not allocated to a facility at the end of a limitation period specified in Oregon Laws, 2010, Chapter 76, Section 5 will expire.

(5) Application acceptance periods

(a) Tier one applications will be accepted at any time prior to the sunset, while allocated funds are available.

(b) Tier two and three applications will only be accepted during an application acceptance period specified in an OA. Applications for tier two

and three received outside of an application acceptance period will not be accepted.

(6) Criteria. The department will announce specific standards and criteria that will be considered in determining eligibility in the OA. In addition to the criteria listed in Oregon Laws, 2010, Chapter 76, Section 6, criteria for tiered two and three potential tax credits may include:

(a) The completeness of the application and whether it was received within the time period specified in the OA;

(b) The appropriate application payment;

(c) The time frame in which actual construction will be started and completed and the ability to meet all regulatory requirements including program deadlines;

(d) Criteria established in statute or rules that apply to the BETC program;

(e) The simple payback period;

(f) The number of jobs created;

(g) Whether the renewable activities were aligned with conservation activities;

(h) The financing structure of the facility;

(i) The reliability of power created;

(j) Whether the facility is combined heat and power or co-gen system;

(k) If the applicant is a public body, whether a competitive bidding process was utilized;

(l) Nationally recognized standards or practices for the specified technology; and

(m) Any other factors listed in the OA.

(7) Incomplete applications

(a) The department will determine if an application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469B.130 to 149B.169 and any applicable rules, standards and criteria in the OA, rules or otherwise adopted by the Director.

(b) For tier one the department will provide a written notice to applicants that the application is incomplete, specifying the information needed to make the application complete. Applicants will be allowed 30 days from the time of notification by the department to provide specified information. The application expires if the applicant does not supply the information within 30 days.

(c) Incomplete applications for tier two or three will not be accepted for the current OA. Applicants may reapply and resubmit their application during the next OA.

(8) Prioritization within tiers

(a) Applications within tier one are not subject to prioritization, but will be required to meet listed standards and other requirements of the BETC program. If the Director receives applications for preliminary certification with a total amount of potential tax credits in excess of the allocation for tier one, the Director will allocate potential tax credits in the order in which complete applications are received.

(b) Applications within tiers two and three will be ranked within each tier against required criteria specified within the OA in effect at the time of application acceptance, and must meet the requirements of the OA and the BETC program.

(9) Allocation of potential tax credits within tiers:

(a) Potential tax credits available within an application period will be allocated to applications in order of the priority established under section (8) and as determined by the procedure in the OA. Applicants may be offered less potential tax credit than requested in their application.

(b) For tiers two and three, applicants will have 10 business days to respond in writing to the department's written notification of the offer of preliminary certification. Applicants who do not respond during this period will be considered to have rejected the offer of the preliminary certification. If an applicant does not accept an allocation, the potential tax credits may be issued to other applications within the period or to future periods or tiers. Upon written acceptance from the applicant, the department will issue a preliminary certification under ORS 469B.145.

(10) Applications allocated potential tax credits: Applicants who are issued a preliminary certification under this section must follow all department procedures and obtain final certification prior to issuance of tax credits. Allocation of potential tax credits through the issuance of a preliminary certification does not guarantee issuance of final certification.

(11) Applications not issued preliminary certification: Applications reviewed under this section and not allocated potential tax credits will be notified by the department. Applicants may make application for the same facility within a future application period but will not be eligible to carry-forward applications or fees.

Stat. Auth.: ORS 469.040 & 469.165

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Stats. Implemented: ORS 469.185 - 469.225, 315.354, 315.356, HB 3680 2010.
Hist.: DOE 14-2010, f. & cert. ef. 11-23-10; DOE 8-2012, f. & cert. ef. 7-10-12

Department of Environmental Quality
Chapter 340

Rule Caption: SOLID WASTE: Electronics Recycling.

Adm. Order No.: DEQ 4-2012

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 6-26-12

Notice Publication Date: 4-1-2012

Rules Adopted: 340-098-0000, 340-098-0010, 340-098-0100, 340-098-0150, 340-098-0200

Subject: The proposed rules would revise the registration fees electronics manufacturers pay annually to DEQ to cover DEQ's costs for administering Oregon's electronics recycling program, Oregon E-Cycles. The proposed rules would establish (a) the revenue needed to cover DEQ's administrative costs; and (b) a seven-tier fee structure and process to distribute the revenue need among registered manufacturers based primarily on their market share.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-098-0000

Applicability

These rules apply to manufacturers of covered electronic devices sold or offered for sale in the State of Oregon for calendar years 2012 and beyond.

Stat Auth: ORS 468.020, 468.065 & 459A.345

Stats. Implemented: ORS 459A.315

Hist.: DEQ 4-2012, f. & cert. ef. 6-26-12

340-098-0010

Definitions

Terms used in OAR 340-098-0000 through 340-098-0200 have the meaning provided in ORS 459A.305. Definitions for additional terms used in OAR 340-098-0000 through 340-098-0200 are:

(1) "DEQ" means the Department of Environmental Quality.

(2) "Market share" means the percentage of the total number of units of covered electronic devices sold in or into Oregon the previous calendar year or most recent four quarters for which data is available, as determined by DEQ.

(3) "Revenue need" means the total amount of revenue DEQ must collect in registration fees in order for the registration fees to approximately match DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

Stat Auth: ORS 468.020, 468.065 & 459A.345

Stats. Implemented: ORS 459A.305 & 459A.315

Hist.: DEQ 4-2012, f. & cert. ef. 6-26-12

340-098-0100

Revenue Need

(1) Revenue need. The revenue need for the fiscal year beginning:

(a) July 1, 2012 is \$415,000;

(b) July 1, 2013 is \$435,000;

(c) July 1, 2014 is \$435,000; and

(d) July 1, 2015 and for subsequent fiscal years is \$465,000.

(2) Revenue need adjustments.

(a) If the revenue collected from registration fees under OAR 340-098-0150 exceeds DEQ's actual costs for the program, DEQ will reduce the revenue need by the excess amount in a subsequent year. DEQ will also evaluate whether to revise the revenue need for future years to ensure that revenue need approximately matches DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

(b) If DEQ has been unable to collect revenue from registration fees owed for a prior year, DEQ may add the amount of uncollected revenue to the revenue need in a subsequent year as necessary to ensure that revenue approximately matches DEQ's projected costs as described in subsection (a). DEQ will make good faith efforts to collect registration fees owed.

(3) Reporting. Each fiscal year DEQ will report its current and projected program expenditures and revenue.

Stat Auth: ORS 468.020, 468.065 & 459A.345

Stats. Implemented: ORS 459A.315

Hist.: DEQ 4-2012, f. & cert. ef. 6-26-12

340-098-0150

Registration Fees

Section (1) describes generally how DEQ determines registration fees, and sections (2) through (4) provide the specific process for determining registration fees.

(1) Overview. Each year manufacturer registration fees total the revenue need for that year. DEQ assigns manufacturers to registration fee Tiers 1-7 based on their market share. All manufacturers within a tier pay the same registration fee in any given year. Manufacturers in Tier 6 pay a fee of \$200. Manufacturers in Tier 7, with the smallest market share, pay \$40. Fees for manufacturers in Tiers 1-5 are calculated each year to total the revenue need remaining after subtracting the revenue expected from Tiers 6 and 7. To determine the manufacturer fee for each of Tiers 1-5, the total market share for all manufacturers in a tier is multiplied by the remaining revenue need. That revenue share for the tier is then divided by the number of manufacturers in the tier to determine the fee for those manufacturers. DEQ then adjusts the fees for Tiers 1-5 so that no fee is more than \$35,000 or less than \$200. If the fee for any tier is over \$35,000, DEQ caps the fee at \$35,000, and distributes the amount of unallocated revenue from that tier to lower tiers in proportion with their market share (excluding Tiers 6 and 7). If the resulting fee for any tier is below \$200, DEQ raises the fee to \$200 for that tier and recalculates the fees for the higher tiers as described above for Tiers 1-5.

(2) Total registration fees. Each year the total registration fees of manufacturers required to pay a registration fee under ORS 459A.315 and OAR 340-098-0000 through 340-098-0200 will equal the revenue need for the fiscal year beginning July 1 of that year.

(3) Registration fees. For each year after 2012, each manufacturer will pay a registration fee described in this section:

(a) Registration fees will be based on the following fee tiers:

(A) Tier 1 includes all manufacturers with a market share greater than or equal to 5%;

(B) Tier 2 includes all manufacturers with a market share greater than or equal to 1% but less than 5%;

(C) Tier 3 includes all manufacturers with a market share greater than or equal to 0.1% but less than 1%;

(D) Tier 4 includes all manufacturers with a market share greater than or equal to 0.03% but less than 0.1%;

(E) Tier 5 includes all manufacturers with a market share greater than or equal to 0.01% but less than 0.03%;

(F) Tier 6 includes all manufacturers with a market share less than 0.01% that equates to 50 or more units.

(G) Tier 7 includes all manufacturers with a market share that equates to less than 50 units.

(b) The registration fee for each manufacturer in Tier 6 will be \$200. The registration fee for each manufacturer in Tier 7 will be \$40.

(c) The registrations fees for manufacturers in Tiers 1-5 will equal the revenue need remaining after subtracting the revenue expected from Tier 6 and 7 fees.

(d) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the total registration fees for each tier will be a percentage of the remaining revenue need that is equal to the total market share of the manufacturers in that tier.

(e) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the registration fee of each manufacturer in a given tier will be the amount of the remaining revenue need that the manufacturer's tier is responsible for, as stated subsection (3)(d), divided by the number of manufacturers in that tier.

(f) For Tiers 1-5, the registration fee for manufacturers in any tier will not be more than \$35,000. The registration fee for manufacturers in a tier in which the registration fee is calculated to be more than \$35,000 will be adjusted to \$35,000.

(g) For Tiers 1-5, after the registration fee adjustments described in subsection(3)(f), the registration fees of each manufacturer in a tier with registration fees below \$35,000 will also be adjusted so that total registration fees still equal the remaining revenue need, as follows:

(A) Fee adjustment = $(W \times (X \div Y)) \div Z$.

(B) "W" is the net amount of registration fees above \$35,000.

(C) "X" is the total market share of all the manufacturers in the manufacturer's tier.

(D) "Y" is the total market share for all manufacturers in tiers 1-5 with registration fees below \$35,000, excluding manufacturers whose fees have been adjusted to \$200 in accordance with subsection (3)(i).

(E) "Z" is the total number of manufacturer's in the manufacturer's tier.

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(h) If any manufacturer in Tiers 1-5 would pay a registration fee greater than \$35,000 after the process described in subsection (3)(g), the process described in subsections (3)(f) and (3)(g) will be repeated until no manufacturer pays a registration fee greater than \$35,000.

(i) After the process described in subsections (3)(f) through (3)(h) has been completed, the registration fee for any manufacturer in Tiers 1-5 in which the registration fee is calculated to be less than \$200 will be adjusted to \$200. The total revenue from all fees in tiers for which fees are raised to \$200 will be subtracted from the remaining revenue need and the fees for all higher tiers will be recalculated to meet that adjusted revenue need as described in subsections (3)(d) through (3)(i). The process described in subsections (3)(d) through (3)(i) will be repeated until no manufacturer pays a registration fee less than \$200.

(4) 2012 fees. Manufacturers will pay registration fees in ORS 459A.315(2)(b) for calendar year 2012, except:

(a) If the total revenue to be collected under the method described in ORS 459A.315(2)(b) is less than the revenue need for 2012, DEQ will calculate each manufacturer's registration fee according to OAR 340-098-0150(3);

(b) The registration fees of manufacturers whose registration fees would be at least \$250 higher calculated under OAR 340-098-0150(3) than under ORS 459A.315(2)(b) will be adjusted so that the total registration fees for 2012 equal revenue need; and

(c) Each manufacturer described in subsection (4)(b) will pay the following registration fee adjustment: $\text{Fee adjustment} = (A \times (B \div C)) \div D$ where:

(A) "A" is the difference between the revenue need and the amount to be collected under the method described in ORS 459A.315(2)(b);

(B) "B" is the total market share of all manufacturers in the manufacturer's tier;

(C) "C" is the total market share of all manufacturers described in subsection (4)(b); and

(D) "D" is the total number of manufacturers in the same tier as the manufacturer.

Stat Auth: ORS 468.020, 468.065 & 459A.315
Stats. Implemented: ORS 459A.315
Hist.: DEQ 4-2012, f. & cert. ef. 6-26-12

340-098-0200 Notifications

(1) Preliminary determination. Beginning in 2013 and each year thereafter, DEQ will make a preliminary determination of each manufacturer's market share and fee tier for that fiscal year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share and fee tier determination. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final determination. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and fee tier and notify each manufacturer of that determination. In making the final market share and fee tier determinations, DEQ will use the best available information as determined by DEQ including any relevant information provided by manufacturers under section (2).

Stat Auth: ORS 468.020, 468.065 & 459A.345
Stats. Implemented: ORS 459A.315
Hist.: DEQ 4-2012, f. & cert. ef. 6-26-12

Rule Caption: Title V operating permit fee increases authorized in statute.

Adm. Order No.: DEQ 5-2012

Filed with Sec. of State: 7-2-2012

Certified to be Effective: 7-2-12

Notice Publication Date: 3-1-2012

Rules Amended: 340-215-0060, 340-220-0030, 340-220-0040, 340-220-0050

Subject: The rulemaking increases Title V operating permit fees by the change in the Consumer Price Index authorized by federal and state law. The fee increases are necessary to cover the reasonable costs associated with DEQ's operation of Oregon's Title V program.

The amendments to the Title V operating permit fees increase base fees under OAR 340-220-0030, emission fees under OAR 340-220-0040 and specific activity fees under OAR 340-220-0050. The fee

increase is approximately 2.4%, and affects the 2012 invoice year for the 2012-13 operating period.

The amendments also make administrative corrections to OAR 340-215-0060, concerning greenhouse gas reporting fees, by correcting references to OAR 340-215-0030 and OAR 340-220-0050.
Rules Coordinator: Maggie Vandehey — (503) 229-6878

340-215-0060 Greenhouse Gas Reporting Fees

(1) Any person required to register and report under OAR 340-215-0030(2)(a)(A) or 340-215-0030(2)(b)(A) must submit greenhouse gas reporting fees to the Department as specified in OAR 340-220-0050. The fees must be received by the Department within 30 days after the Department mails the fee invoice.

(2) Any person required to register and report under OAR 340-215-0030(2)(a)(B) or (C) or 340-215-0030(2)(b)(B) must submit greenhouse gas reporting fees to the Department as specified in OAR chapter 340, division 216, Table 2, Part 3. The fees must be received by the Department within 30 days after the Department mails the fee invoice.

Stat. Auth.: ORS 468.020 & 468A.050
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 14-2011, f. & cert. ef. 7-21-11; DEQ 5-2012, f. & cert. ef. 7-2-12

340-220-0030 Annual Base Fee

(1) The Department will assess an annual base fee of \$7,289 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2011 to November 14, 2012.

(2) The Department will assess an annual base fee of \$7,466 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2012 to November 14, 2013, and for each annual period thereafter.

NOTE: As indicated in the rulemaking proposed in March 2012, the annual base fee for the period of November 15, 2013 to November 14, 2014, and for each annual period thereafter, will be based on the 2012 increase in the consumer price index and will be presented to the Environmental Quality Commission for a future rule revision.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12

340-220-0040 Emission Fee

(1) The Department will assess an emission fee of \$ 56.45 per ton of each regulated pollutant emitted during calendar year 2011 to each source subject to the Oregon Title V Operating Permit Program.

(2) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

NOTE: As indicated in the rulemaking proposed in March 2012, the emission fee per ton of each regulated pollutant emitted during calendar year 2012, and for each calendar year thereafter, will be based on the 2012 increase in the consumer price index and will be presented to the Environmental Quality Commission for a future rule revision.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12

340-220-0050 Specific Activity Fees

(1) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of January 1, 2012 to December 31, 2012 as follows:

(a) Existing source permit revisions:

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- (A) Administrative* —\$455;
- (B) Simple —\$1,820;
- (C) Moderate —\$13,657;
- (D) Complex —\$27,314.

(b) Ambient air monitoring review —\$3,641.

*Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in 340-218-0150 are subject to simple, moderate or complex revision fees.

NOTE: As indicated in the rulemaking proposed in March 2012, the specific activity fees as of January 1, 2013 will be based on the 2012 increase in the consumer price index and will be presented to the Environmental Quality Commission for a future rule revision.

(2) The Department will assess the following specific activity fee for an Oregon Title V Operating Permit program source for annual greenhouse gas reporting, as required by OAR 340-215-0060(1) — Fifteen percent of the following, not to exceed \$4,500:

(a) The applicable annual base fee (for the period of November 15 of the current year to November 14 of the following year); and

(b) The applicable annual emission fee (for emissions during the previous calendar year).

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2011, f. & cert. ef. 7-21-11; DEQ 5-2012, f. & cert. ef. 7-2-12

Department of Fish and Wildlife Chapter 635

Rule Caption: Columbia River Treaty Indian Commercial Shad Season Implemented.

Adm. Order No.: DFW 68-2012(Temp)

Filed with Sec. of State: 6-20-2012

Certified to be Effective: 6-21-12 thru 7-31-12

Notice Publication Date:

Rules Amended: 635-041-0072

Subject: Rule modifications set a 40-day commercial shad season in Zone 6 of the Columbia River, from June 21 through July 31, 2012 and allow the sales of shad caught during this period. Revisions are consistent with action taken June 20, 2012 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0072

Carp, Shad and Other Nongame Fish

It is *unlawful* to fish for or possess carp, shad and other nongame fish from the Columbia River for commercial purposes except:

(1) As authorized by ORS 508.106 (Permit to take carp or other food-fish).

(2) During open commercial fishing periods with gear authorized for those open commercial fishing periods.

(3) Commercial sales of shad are authorized for fish caught during the period from Thursday, June 21 through Tuesday, July 31, 2012 (40 days).

(a) Fishing in all of Zone 6, except for outside Boat Restricted Zones at dams, is allowed. Only shad may be kept or sold. All other fish must be immediately returned to the water unharmed.

(b) Authorized gear types include: drift gill nets, fish wheels, purse seines and beach seines. Experimental gear types can only be used when commercial gill net seasons are closed.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 40-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 12-2-07; Administrative correction 12-20-07; DFW 68-2012(Temp), f. 6-20-12, cert. ef. 6-21-12 thru 7-31-12

Rule Caption: Recreational Spring Chinook Fishery In Lookingglass Creek Re-Opens.

Adm. Order No.: DFW 69-2012(Temp)

Filed with Sec. of State: 6-20-2012

Certified to be Effective: 6-22-12 thru 9-1-12

Notice Publication Date:

Rules Amended: 635-019-0090

Rules Suspended: 635-019-0090(T)

Subject: This amended rule allows recreational anglers opportunity to harvest adipose fin-clipped adult and jack Chinook salmon, which are in excess of the Department's hatchery production needs, in Lookingglass Creek. This fishery is scheduled for the period from Friday, June 22 through June 25.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2012 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 **2012 Oregon Sport Fishing Regulations**.

(2) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is open to angling for adipose fin-clipped adult Chinook salmon from 12:01 a.m. Friday, June 22 through 11:59 p.m. Monday, June 25, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) During the duration of the spring Chinook angling season, the area closure listed for Lookingglass Creek in the Northeast Zone *Special Regulations* is modified to: Lookingglass Creek closed between Jarboe Creek and 200 feet upstream of the hatchery water intake.

(c) Hook gap restrictions listed in the Northeast Zone *Special Regulations* for Lookingglass Creek are removed for the duration of the spring Chinook angling season.

(d) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

(3) Catherine Creek from the Miller Lane Bridge to the Highway 203 Bridge, located upstream of Catherine Creek State Park, is open to angling for adipose fin-clipped adult Chinook salmon from May 26 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

(4) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

(5) The Wallowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

[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; 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.

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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 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12

Rule Caption: Sport Chinook Fisheries On the Imnaha River Close.

Adm. Order No.: DFW 70-2012(Temp)

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 6-27-12 thru 9-1-12

Notice Publication Date:

Rules Amended: 635-019-0090

Rules Suspended: 635-019-0090(T)

Subject: This amended rule closes the recreational spring Chinook fishery in the Imnaha River effective 11:59 p.m. Wednesday, June 27, 2012.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The 2012 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 2012 Oregon Sport Fishing Regulations.

(2) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is open to angling for adipose fin-clipped adult Chinook salmon from 12:01 a.m. Friday, June 22 through 11:59 p.m. Monday, June 25, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) During the duration of the spring Chinook angling season, the area closure listed for Lookingglass Creek in the Northeast Zone *Special Regulations* is modified to: Lookingglass Creek closed between Jarboe Creek and 200 feet upstream of the hatchery water intake.

(c) Hook gap restrictions listed in the Northeast Zone *Special Regulations* for Lookingglass Creek are removed for the duration of the spring Chinook angling season.

(d) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

(3) Catherine Creek from the Miller Lane Bridge to the Highway 203 Bridge, located upstream of Catherine Creek State Park, is open to angling for adipose fin-clipped adult Chinook salmon from May 26 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

(4) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until June 27, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

(5) The Wallowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2012 Oregon Sport Fishing Regulations, remain in effect.

[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; 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 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12

Rule Caption: Trask River Angling Regulations Modified Effective July 1, 2012.

Adm. Order No.: DFW 71-2012(Temp)

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 7-1-12 thru 11-30-12

Notice Publication Date:

Rules Amended: 635-014-0090

Rules Suspended: 635-014-0090(T)

Subject: These rule modifications delay the spring Chinook fishery closure at the Trask River Hatchery Hole from June 1 until August 1, 2012 in order to allow anglers greater opportunity to harvest hatch-

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ery spring Chinook by extending the season 200 feet upstream and 900 feet downstream of the hatchery. Further modifications reduce the ability of anglers to employ illegitimate snagging methods in a segment of the Trask River and Three Rivers by imposing more restrictive gear regulations during the later portion of the spring Chinook angling season.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-014-0090

Inclusions and Modifications

(1) The **2012 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 **2012 Oregon Sport Fishing Regulations** pamphlet.

(2) Notwithstanding all other requirements provided in the **2012 Oregon Sport Fishing Regulations** pamphlet, the following additional rules apply to adult salmon angling in waters of the Northwest Zone:

(a)(A) All waters of the Necanicum River Basin, Nehalem River Basin (including North Fork), Tillamook Bay Basin, (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers), and the Nestucca River Basin (including the Little Nestucca and Three Rivers) and Salmon River that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day, or 2 adult non fin-clipped Chinook salmon per day from the Siletz or Yaquina rivers, and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and all state waters terminal area seasons in the Marine Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31 and except in the Tillamook Terminal Area where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between October 1–31.

(B) The Trask River will be closed from Gold Creek, at the hatchery, 200 feet upstream and 900 feet downstream August 1 through November 30, 2012; and for the Trask River segment from Cedar Creek wooden boat slide (RM 10.9) downstream to Loren's Drift wooden boat slide (RM 9.0) from June 1 to July 31 angling is restricted to fly angling and bobber angling only.

(i) Bobber angling gear must include a bobber and a leader no longer than 36-inches in length. Any weight (except the bobber) may be no more than 36-inches from the lowermost hook when suspended vertically. The leader below the bobber must remain suspended in the water column and not resting on the river bottom.

(ii) For purposes of this rule, a bobber is a hook-less, floating device that is attached to or slides along the mainline or leader above the hook(s) for the purpose of suspending hook(s) (which are part of the bait, lure or fly) off the bottom of the stream and visually signaling (from the surface of the water) a fish's strike at the hook(s).

(iii) For purposes of this rule, a leader is a section of line, other than the mainline, extending from the lowermost hook (part of bait, lure, or fly) to the first swivel, weight, bobber, or any other attachment.

(b) Within the Nehalem Basin (including the North Fork) the following additional rules apply:

(A) Mainstem (bay) closed to all salmon and steelhead angling seaward from a line extending from Nehalem Bay State Park Boat Ramp to Fishery Point July 1 through September 14 and closed to all Chinook salmon angling upstream of Peterson Creek (RM 10.2) July 1 through December 31.

(B) Nehalem tidewater from the jetty tips upstream to Peterson Creek (RM 10.2) on South Fork and North Fork Road Bridge on the North Fork is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 1,200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(c) Within the Tillamook Bay Basin the following additional rules apply:

(A) Tillamook Bay tidewater from the jetty tips upstream to Hwy. 101 Bridge on Miami, Kilchis, Wilson, and Trask rivers and Burton Bridge on Tillamook River is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 600 non adipose fin-clipped coho salmon.

(B) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 1 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 1 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(d) Within the Nestucca Basin (including the Little Nestucca River and Three Rivers) the following rules apply:

(A) Mainstem Nestucca upstream of First Bridge (RM 15.8) near Beaver closed to all Chinook angling August 1 through December 31.

(B) Nestucca Bay tidewater (excluding Little Nestucca tidewater) from the bay mouth upstream to the Cloverdale Bridge (RM 7.1) is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 1 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 1 adult non adipose fin-clipped coho salmon seasonal aggregate limit.

(e) Within the Siletz River Basin the following additional rules apply:

(A) Mainstem and tributaries above Ojalla Bridge (RM 31) closed to Chinook August 1–December 31; Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at RM 8 is closed for Chinook salmon from August 1 through December 31;

(B) Siletz River and Bay upstream to Ojalla Bridge (RM 31) is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 700 non adipose fin-clipped coho salmon; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(f) Within the Yaquina River Basin the following additional rules apply:

(A) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at RM 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31;

(B) The Yaquina River and Bay upstream to the confluence of the Yaquina River and Big Elk Creek are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 575 non adipose fin-clipped coho salmon; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(g) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) within the Drift Creek Wilderness Area and upstream are closed for Chinook salmon from August 1 through December 31;

(B) All waters of the Alsea River upstream of the confluence with Five Rivers at RM 21 are closed for Chinook salmon from August 1 through December 31;

(C) All waters of Five Rivers are closed for Chinook salmon from August 1 through December 31.

(D) The Alsea River and Bay upstream to the confluence of the Alsea River and Five Rivers are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 675 non adipose fin-clipped coho salmon; and

(E) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

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(h) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at RM 30.0 are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Lake Creek are closed for Chinook salmon August 1 through December 31 and all waters of Lake Creek downstream of Fish Creek are closed to all angling from September 1 through November 30;

(C) The Siuslaw River and Bay upstream to the confluence of the Siuslaw River and Lake Creek are open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 900 non adipose fin-clipped coho salmon; and

(D) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

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 2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 139-2011(Temp), f. 10-3-11, cert. ef. 10-6-11 thru 12-31-11; DFW 141-2011(Temp), f. 10-6-11, cert. ef. 10-10-11 thru 12-31-11; DFW 143-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 12-31-11; DFW 148-2011(Temp), f. 10-20-11, cert. ef. 10-21-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 53-2012(Temp), f. 5-29-12, cert. ef. 6-1-12 thru 10-31-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 63-2012(Temp), f. & cert. ef. 6-12-12 thru 10-31-12; DFW 71-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 11-30-12

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Rule Caption: Sport Chinook Fisheries on Catherine Creek Close.

Adm. Order No.: DFW 72-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 8-31-12

Notice Publication Date:

Rules Amended: 635-019-0090

Rules Suspended: 635-019-0090(T)

Subject: This amended rule closes the recreational spring Chinook fishery on Catherine Creek effective 12:01 a.m. Sunday, July 1, 2012.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2012 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 **2012 Oregon Sport Fishing Regulations**.

(2) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is open to angling for adipose fin-clipped adult Chinook salmon from 12:01 a.m. Friday, June 22 through 11:59 p.m. Monday, June 25, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) During the duration of the spring Chinook angling season, the area closure listed for Lookingglass Creek in the Northeast Zone *Special Regulations* is modified to: Lookingglass Creek closed between Jarboe Creek and 200 feet upstream of the hatchery water intake.

(c) Hook gap restrictions listed in the Northeast Zone *Special Regulations* for Lookingglass Creek are removed for the duration of the spring Chinook angling season.

(d) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

(3) Catherine Creek from the Miller Lane Bridge to the Highway 203 Bridge, located upstream of Catherine Creek State Park, is open to angling for adipose fin-clipped adult Chinook salmon from May 26 through June 30, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

(4) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until June 27, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

(5) The Willowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

[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; 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,

ADMINISTRATIVE RULES

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 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-28-12 thru 9-1-12; DFW 50-2012(Temp), f. 6-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12

Rule Caption: Columbia River Recreational Sturgeon Fisheries Downstream of the Wauna Powerlines Close.

Adm. Order No.: DFW 73-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 8-31-12

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: This amended rule establishes a replacement for the “Skamania island” boundary which was removed by acts of nature. Further modifications close the ongoing recreational sturgeon fishery in the Columbia River, below the Wauna powerlines four (4) days earlier than previously scheduled, effective 12:01 a.m. Thursday, July 5, 2012, due to the anticipated attainment of the pre-season harvest guideline. Modifications are consistent with action taken June 28, 2012 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The 2012 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 2012 Oregon Sport Fishing Regulations.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38–54 inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

(b) October 20 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 19.

(4) The mainstem 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 12 through July 4.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 11 and July 9 through December 31.

(6) During the fishing period as identified in subsection (4)(a) and section (9) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing periods as identified in subsection (4)(b) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream 9 miles to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore westerly to a boundary marker on the Washington shore upstream of Fir Point from May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(9) Effective 12:01 a.m. Sunday, June 24, 2012 the retention of white sturgeon in Bonneville Reservoir and adjacent tributaries is prohibited.

(10) Effective 12:01 a.m. Monday May 21, 2012 the retention of white sturgeon in the John Day Pool and adjacent tributaries is prohibited.

(11) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43-54 inches, seven days per week from February 1 through July 31.

(12) The retention of white sturgeon in the area identified in section (11) of this rule is prohibited August 1 through January 31.

(13) Retention of green sturgeon is prohibited all year in all areas.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12

Rule Caption: Treaty Indian Summer Commercial Fisheries in the Columbia River Downstream of Bonneville Dam.

Adm. Order No.: DFW 74-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 10-31-12

Notice Publication Date:

Rules Amended: 635-041-0045

Subject: Rule amendments allow sales in Oregon of fish harvested in the Treaty Indian summer commercial fisheries in the Columbia River downstream of Bonneville Dam, beginning 6:00 a.m. Sunday, July 1, 2012. Modifications are in response to a Treaty Tribes request for authorized sales of fish caught in Tribal commercial fisheries both above and below Bonneville Dam. Modifications are consistent with

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action taken June 29, 2012 by the State of Oregon in cooperation with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0045

Closed Commercial Fishing Areas

Unless otherwise specified in this rule and OAR 635-041-0063, the following waters are closed to commercial fishing:

(1) All Oregon tributaries of the Columbia River.

(2) The Columbia River westerly and downstream of the Bridge of the Gods except:

(a) Fisheries conducted by the Yakama, Warm Springs, Nez Perce and Umatilla tribes downstream of Bonneville Dam (bank fishing only) under provisions of the agreements with the states of Oregon and Washington are open until further notice.

(A) Effective 6:00 a.m. July 1, 2012, commercial sales of Chinook, steelhead, sockeye, coho, walleye, shad, yellow perch, catfish, bass and carp are allowed. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. Fish may not be sold on USACE property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(B) Gear is restricted to subsistence fishing gear which includes hoopnets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line.

(C) Salmon, steelhead, walleye, shad, carp, bass, catfish and yellow perch landed during an open treaty commercial fishing period may be sold at any time.

(b) Platform and hook-and-line fisheries from the Bridge of the Gods downstream to the subsistence fishing deadline as described in OAR 635-041-0020(1) are open to commercial sales whenever sales are authorized for platform and hook-and-line fisheries in the remainder of Bonneville Pool.

(3) The Columbia River easterly and upstream of a line extending at a right angle across the thread of the river from a deadline marker one mile downstream of McNary Dam.

(4) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at the west end of 3-Mile Rapids located approximately 1.8 miles below The Dalles Dam, upstream to a line from a deadline marker on the Oregon shore located approximately 3/4 mile above The Dalles Dam east fishway exit, thence at a right angle to the thread of the river to a point in midriver, thence downstream to Light "1" on the Washington shore; except that dip nets, bag nets, and hoop nets are permitted during commercial salmon and shad fishing seasons at the Lone Pine Indian fishing site located immediately above The Dalles Interstate Bridge.

(5) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at Preachers Eddy light below the John Day Dam and a line approximately 4.3 miles upstream extending from a marker on the Oregon shore approximately one-half mile above the upper easterly bank of the mouth of the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, thence turning downstream to a marker located on the Washington shore approximately opposite the mouth of the John Day River.

(6) The Columbia River within areas at and adjacent to the mouths of the Deschutes River and the Umatilla River. The closed areas are along the Oregon side of the Columbia River and extend out to the midstream from a point one-half mile above the intersection of the upper bank of the tributary with the Columbia River to a point one mile downstream from the intersection of the lower bank of the tributary with the Columbia River. All such points are posted with deadline markers.

(7) The Columbia River within an area and adjacent to the mouth of the Big White Salmon River. The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

(8) The Columbia River within an area at and adjacent to the mouth of Drano Lake (Little White Salmon River). The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upriver of the outlet of Drano Lake.

(9) The Columbia River within an area and adjacent to the mouth of the Wind River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of

the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

(10) The Columbia River within areas at and adjacent to the mouth of Hood River. The closed area is along the Oregon side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at end of the breakwall at the west end of the Port of Hood River and 1/2 mile upriver from the east bank.

(11) The Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway, except that during the period of August 25-September 20 inclusive the closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between a marker located 1 1/2 miles downriver of the Spring Creek Hatchery fishway up to the downstream marker of the Big White Salmon sanctuary located approximately 1/2 mile upriver of the Spring Creek Hatchery fishway.

(12) Herman Creek upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(13) The Columbia River within an area and adjacent to the mouth of the Klickitat River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1-1/8 miles downstream from the west bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 149(Temp), f. & ef. 9-21-77 thru 1-18-78; 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 635-035-0045; FWC 6-1980, f. & ef. 1-28-80; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 4-1984, f. & ef. 1-31-84; FWC 55-1985(Temp), f. & ef. 9-6-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 25-1986(Temp), f. & ef. 6-25-86; FWC 42-1986, f. & ef. 8-15-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 40-2011(Temp), f. & cert. ef. 5-5-11 thru 10-31-11; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 60-2011(Temp), f. 6-2-11, cert. ef. 6-6-11 thru 10-31-11; DFW 63-2011(Temp), f. 6-8-11, cert. ef. 6-9-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 119-2011(Temp), f. 8-26-11, cert. ef. 8-29-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; DFW 74-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 10-31-12

Rule Caption: Oregon Commercial Fishing Regulations, Division 635-004 Restructure and Reorganization.

Adm. Order No.: DFW 75-2012

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 5-1-2012

Rules Adopted: 635-004-0200, 635-004-0205, 635-004-0210, 635-004-0230, 635-004-0270, 635-004-0275, 635-004-0285, 635-004-0300, 635-004-0305, 635-004-0310, 635-004-0315, 635-004-0320, 635-004-0325, 635-004-0330, 635-004-0335, 635-004-0350, 635-004-0355, 635-004-0370, 635-004-0375, 635-004-0380, 635-004-0385, 635-004-0390, 635-004-0395, 635-004-0400, 635-004-0405, 635-004-0410, 635-004-0415, 635-004-0420, 635-004-0445, 635-004-0455, 635-004-0460, 635-004-0465, 635-004-0470, 635-004-0475, 635-004-0480, 635-004-0485, 635-004-0490, 635-004-0495, 635-004-0500, 635-004-0505, 635-004-0510, 635-004-0520, 635-004-0525, 635-004-0535, 635-004-0540, 635-004-0550, 635-004-0555, 635-004-0560, 635-004-0565, 635-004-0570, 635-004-0575, 635-004-0580, 635-004-0585, 635-004-0590, 635-004-0610, 635-004-0625, 635-004-0630, 635-004-0650, 635-004-0655, 635-004-0660, 635-004-0665, 635-004-0670, 635-004-0675, 635-004-0680, 635-004-0685, 635-004-0690

Rules Repealed: 635-004-0005, 635-004-0009, 635-004-0016, 635-004-0017, 635-004-0018, 635-004-0019, 635-004-0029, 635-004-0033, 635-004-0040, 635-004-0052, 635-004-0075, 635-004-0100, 635-004-0110

Rules Renumbered: 635-004-0003 to 635-004-0225, 635-004-0011 to 635-004-0425, 635-004-0014 to 635-004-0440, 635-004-0026 to 635-004-0515, 635-004-0140 to 635-004-0255

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Rules Ren. & Amend: 635-004-0012 to 635-004-0430, 635-004-0013 to 635-004-0435, 635-004-0020 to 635-004-0215, 635-004-0021 to 635-004-0345, 635-004-0025 to 635-004-0220, 635-004-0027 to 635-004-0450, 635-004-0035 to 635-004-0235, 635-004-0036 to 635-004-0365, 635-004-0042 to 635-004-0530, 635-004-0048 to 635-004-0280, 635-004-0050 to 635-004-0290, 635-004-0055 to 635-004-0595, 635-004-0060 to 635-004-0600, 635-004-0065 to 635-004-0605, 635-004-0066 to 635-004-0615, 635-004-0068 to 635-004-0620, 635-004-0070 to 635-004-0545, 635-004-0080 to 635-004-0635, 635-004-0085 to 635-004-0640, 635-004-0090 to 635-004-0645, 635-004-0125 to 635-004-0240, 635-004-0130 to 635-004-0245, 635-004-0135 to 635-004-0250, 635-004-0145 to 635-004-0260, 635-004-0150 to 635-004-0265, 635-004-0160 to 635-004-0295, 635-004-0165 to 635-004-0340, 635-004-0170 to 635-004-0360

Subject: This is part of an effort to restructure and reorganization Oregon's regulations governing commercial fisheries, comprising of new rules and amendments to and renumbering of existing rules. Modifications increase the clarity, consistency, and ease of use without changing the intent or practical effect of the regulations. House-keeping and technical corrections to the regulations were performed to ensure consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0200

Organization

(1) This Division is organized into the following major finfish fishery sections:

(a) Groundfish Section, including the following fisheries:

- (A) Trawl and Fixed Gear Groundfish Fisheries; and
- (B) Black Rockfish / Blue Rockfish / Nearshore Fishery

(b) Coastal Pelagic Species and Smelt Species Section, including the following fisheries:

- (A) Sardine Fishery;
- (B) Inland Waters Herring Fishery;
- (C) Yaquina Bay Roe-Herring Fishery;
- (D) Pacific Ocean Herring Fishery;
- (E) Anchovy Fishery; and
- (F) Smelt Fishery.

(c) Highly Migratory Species Section, including the following fisheries:

Albacore Tuna Fishery.

(d) Other Finfish Section, including the following fisheries:

- (A) Halibut Fishery;
- (B) Coastal Rivers Shad Fishery;
- (C) Hagfish Fishery;
- (D) Sturgeon Fishery;
- (E) Surfperch Fishery;
- (F) Minor Finfish Fisheries; and
- (G) Intertidal Animal Fishery.

(2) Administrative rules OAR 635-004-0205 through OAR 635-004-0265 are general regulations, in addition to and not in lieu of regulations contained within the fishery sections listed in section (1) of this rule.

(3) Invertebrates and other marine animals not regulated in OAR Chapter 635, Division 004 are managed by regulations in OAR chapter 635, division 005.

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

Stats. Implemented: ORS 506.109

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0205

Licensing Requirements

In addition to the regulations contained in this Division, fishers should consult regulations contained in OAR chapter 635, division 006 and Oregon Revised Statutes Chapter 508 for licensing requirements and fee information.

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

Stats. Implemented: ORS 506.129, 508.025, 508.035, 508.235, 508.260, 508.300, 508.306 & 508.312

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0210

Authority of Enforcement in Fishery Conservation Zone and Exclusive Economic Zone

(1) Pursuant to ORS 506.750 and ORS 506.755, regulations including but not limited to inspection of catch, methods of fishing, gear restrictions, seasons, closures and restricted areas are applicable in the Fishery Conservation Zone (0-50 nautical miles offshore of Oregon), and federal commercial fishing regulations are applicable in the Exclusive Economic Zone (3-200 nautical miles offshore of the United States).

(2) For the purposes of this rule, "Fishery Conservation Zone" means the zone between the mean high water mark of tidally influenced bodies of water of the state of Oregon to 50 nautical miles offshore of Oregon, as pursuant to ORS 506.755.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 506.755

Stats. Implemented: ORS 506.109, 506.501, 506.511, 506.521, 506.750 & 506.755

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0215

Definitions

As used in Division 004 regulations:

(1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.

(2) "Board" means the Commercial Fishery Permit Board.

(3) "Buy" includes offer to buy, barter, exchange or trade.

(4) "Coastal Pelagic Species" means all species of ocean food fish and shellfish defined as Coastal Pelagic Species in the Fishery Management Plan for U.S. West Coast Fisheries for Coastal Pelagic Species and in the Federal Coastal Pelagic Species Regulations, Title 50, Part 660, and include:

- (a) Jack mackerel (*Trachurus symmetricus*);
- (b) Jack smelt (*Atherinopsis californiensis*);
- (c) Krill (all species in order Euphausiacea);
- (d) Market squid (*Loligo opalescens*);
- (e) Northern anchovy (*Engraulis mordax*);
- (f) Pacific herring (*Clupea harengus pallasi*);
- (g) Pacific mackerel (*Scomber japonicus*); and
- (h) Pacific sardine (*Sardinops sagax*).

(5) "Commercial harvest cap" means the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries.

(6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.

(7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(9) "Department" means the State Department of Fish and Wildlife.

(10) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(11) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following pieces of equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.

(12) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.

(13) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;

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(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) "Purse seine" means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) "Seine" means any non-fixed net other than a trawl net or gillnet and includes all types of purse seines;

(j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;

(m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;

(o) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and

(p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(14) "Fishing trip" means a period of time between landings when fishing is conducted.

(15) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction, pursuant to ORS 506.036.

(16) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 and includes:

(a) All species of rockfish, thornyheads, and scorpionfish that occur off Washington, Oregon, or California (genera *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastes*);

(b) Arrowtooth flounder (*Atheresthes stomias*);

(c) Big skate (*Raja binoculata*);

(d) Butter sole (*Isopsetta isolepis*);

(e) Cabezon (*Scorpaenichthys marmoratus*);

(f) California skate (*Raja inornata*);

(g) Curlfin sole (*Pleuronichthys decurrens*);

(h) Dover sole (*Microstomus pacificus*);

(i) English sole (*Parophrys vetulus*);

(j) Finescale codling (*Antimora microlepis*);

(k) Flathead sole (*Hippoglossoides elassodon*);

(l) Kelp greenling (*Hexagrammos decagrammus*);

(m) Leopard shark (*Triakis semifasciata*);

(n) Lingcod (*Ophiodon elongatus*);

(o) Longnose skate (*Raja rhina*);

(p) Pacific cod (*Gadus macrocephalus*);

(q) Pacific rattail (*Coryphaenoides acrolepis*);

(r) Pacific sanddab (*Citharichthys sordidus*);

(s) Pacific whiting (*Merluccius productus*);

(t) Petrale sole (*Eopsetta jordani*);

(u) Ratfish (*Hydrolagus colliiei*);

(v) Rex sole (*Glyptocephalus zachirus*);

(w) Rock sole (*Lepidopsetta bilineata*);

(x) Sablefish (*Anoplopoma fimbria*);

(y) Sand sole (*Psettichthys melanostictus*);

(z) Soupfin shark (*Galeorhinus zyopterus*);

(aa) Spiny dogfish (*Squalus acanthias*);

(bb) Starry flounder (*Platichthys stellatus*); and

(cc) Starry rockfish (*Sebastes constellatus*);

(17) "Harvest guideline" means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery.

(18) "Highly Migratory Species" means all species of ocean food fish defined as highly migratory species in the Fishery Management Plan for

U.S. West Coast Fisheries for Highly Migratory Species and in the Federal Highly Migratory Species Regulations, Title 50, Part 660, and includes:

(a) Bigeye thresher shark (*Alopias superciliosus*);

(b) Bigeye tuna (*Thunnus obesus*);

(c) Blue shark (*Prionace glauca*);

(d) Common thresher shark (*Alopias vulpinus*);

(e) Dorado (*Coryphaena hippurus*);

(f) North Pacific albacore tuna (*Thunnus alalunga*);

(g) Northern bluefin tuna (*Thunnus thynnus*);

(h) Pacific swordfish (*Xiphias gladius*);

(i) Pelagic thresher shark (*Alopias pelagicus*);

(j) Shortfin mako shark (*Isurus oxyrinchus*);

(k) Skipjack tuna (*Katsuwonus pelamis*);

(l) Striped marlin (*Tetrapturus audax*); and

(m) Yellowfin tuna (*Thunnus albacares*).

(19) "Inland waters" means all waters of the state except the Pacific Ocean.

(20) "Intertidal" means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.

(21) "Land, landed, or landing" means either of the following:

(a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish aboard the vessel are counted as part of that landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation.

(b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(22) "Length" or "Length Overall" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions such as a dive step or platform.

(23) "Length, total" of a fish is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(24) "Nearshore species" includes (See ORS 506.011):

(a) Black and yellow rockfish (*Sebastes chrysomelas*);

(b) Brown Irish lord (*Hemilepidotus spinosus*);

(c) Brown rockfish (*Sebastes auriculatus*);

(d) Buffalo sculpin (*Enophrys bison*);

(e) Cabezon (*Scorpaenichthys marmoratus*);

(f) Calico rockfish (*Sebastes dalli*);

(g) China rockfish (*S. nebulosus*);

(h) Copper rockfish (*S. caurinus*);

(i) Gopher rockfish (*S. carnatus*);

(j) Grass rockfish (*S. rastelliger*);

(k) Kelp greenling (*Hexagrammos decagrammus*);

(l) Kelp rockfish (*Sebastes atrovirens*);

(m) Olive rockfish (*S. serranoides*);

(n) Painted greenling (*Oxylebius pictus*);

(o) Quillback rockfish (*Sebastes maliger*);

(p) Red Irish lord (*Hemilepidotus hemilepidotus*);

(q) Rock greenling (*Hexagrammos lagocephalus*);

(r) Tiger rockfish (*Sebastes nigrocinctus*);

(s) Treefish (*S. serriceps*).

(t) Vermillion rockfish (*S. miniatus*); and

(u) Whitespotted greenling (*Hexagrammos stelleri*);

(25) "Ocean food fish" means all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(26) "Other nearshore rockfish" includes:

(a) Black and yellow rockfish (*Sebastes chrysomelas*);

(b) Brown rockfish (*S. auriculatus*);

(c) Calico rockfish (*S. dalli*);

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- (d) China rockfish (*S. nebulosus*);
- (e) Copper rockfish (*S. caurinus*);
- (f) Gopher rockfish (*S. carnatus*);
- (g) Grass rockfish (*S. rastelliger*);
- (h) Kelp rockfish (*S. atrovirens*);
- (i) Olive rockfish (*S. serranoides*);
- (j) Quillback rockfish (*S. maliger*); and
- (k) Treefish (*S. sericeus*).

(27) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(28) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.

(29) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(30) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting.

(31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.

(32) "Rockfish" includes all species in the following genera:

- (a) *Sebastes*; and
- (b) *Sebastolobus*.

(33) "Salmon" means all anadromous species of salmon, including but not limited to:

- (a) *Oncorhynchus gorbuscha*, commonly known as humpback, humpies or pink salmon.
- (b) *Oncorhynchus keta*, commonly known as chum or dog salmon.
- (c) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.
- (d) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.
- (e) *Oncorhynchus tshawytscha*, commonly known as Chinook salmon.

(34) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(35) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(36) "Smelt" means all species in the family *Osmeridae*.

(37) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(38) "Transport" means transport by any means, and includes offer or receive for transportation.

(39) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

- (A) Period 1: January through February;
- (B) Period 2: March through April;
- (C) Period 3: May through June;
- (D) Period 4: July through August;
- (E) Period 5: September through October; and
- (F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in seven (7) consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00

hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(40) "Undue hardship" means death, serious illness requiring extended care by a physician, permanent disability, or other circumstances beyond the individual's control.

(41) "Unlawful to buy" means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.

(42) "Vessel" means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes, and has the same meaning as 'boat' as specified in ORS 506.006.

(43) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(44) "Vessel owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.

(45) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

(46) "Week" means the period beginning at 00:01 hours local time on Sunday and ending at 24:00 hours local time on the following Saturday.

Stat. Auth.: ORS 496.138, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 70-2005, f. & cert. ef. 7-8-05; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-004-0020, DFW 75-2012, f. 6-28-12

635-004-0220

Closed Season and Areas

(1) It is unlawful to take for commercial purposes, the following from Special Regulation Marine Areas described in the "Oregon Sport Fishing Regulations:"

- (a) Shellfish and invertebrates in designated Marine Garden areas.
- (b) Shellfish and invertebrates in designated Intertidal and Subtidal Research Reserves.
- (c) Fish, shellfish and invertebrates in designated Habitat Refuges.
- (d) Fish, shellfish and invertebrates from 1000 feet around and including Pyramid Rock from May 1 through August 31.

(2) It is unlawful to move any vessel within 500 feet of the main rocks in Three Arch Rocks National Wildlife Refuge from May 1 through September 15.

(3) It is unlawful to take ocean food fish for commercial purposes during the following seasons and areas:

(a) Except as provided in these rules or in the Code of Federal Regulations, Title 50 Part 660; and

(b) From Oregon coastal bays, the Oregon estuary waters of the Columbia River, or from or within 200 yards of any man-made structures. This closure does not apply to:

(A) Ocean food fish taken in specific fisheries established by rule allowing harvest in inland waters, but only during the times and areas specified in those fishery's regulations;

(B) Ocean food fish taken to be sold or used for scientific or educational purposes, or for live public display;

(C) Pacific herring, Pacific sardine (pilchard), anchovies, and shad that are taken by hook-and-line and sold as bait; or to

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(D) Pacific herring, Pacific sardine (pilchard), anchovies, and shad that are taken by beach seine in the Umpqua estuary and sold as bait.

(c) All species other than those whose harvest is authorized under these rules must be immediately returned to the water unharmed.

(4) The following areas have additional closures and prohibitions as specified in ORS Chapter 511, and fishers should consult these regulations before fishing in these areas:

- (a) Coastal Streams Areas;
- (b) Columbia River Area;
- (c) Rogue River Area;
- (d) Curry County Area;
- (e) Coos, Douglass and Lane County Areas;
- (f) Nestucca, Netarts and Tillamook Bay Areas; and
- (g) Willamette River Area.

(5) Marine Reserves and Marine Protected Areas within Oregon's Territorial Sea have been established and fishers should consult regulations in OAR Division 012 regarding fishing and transit restrictions.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 38, f. & ef. 1-23-76, Renumbered from 625-010-0550; FWC 8-1979, f. 3-1-79, ef. 3-2-79; FWC 9-1979(Temp), f. & ef. 3-5-79 through 3-31-79; FWC 50-1979, f. & ef. 11-1-79, Renumbered from 635-036-0275; FWC 95-1994, f. 12-28-95, cert. ef. 1-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 63-2002(Temp) f. & cert. ef. 6-18-02 thru 12-14-02; DFW 103-2002(Temp), f. 9-13-02 cert. ef. 9-14-02 thru 9-30-02; DFW 115-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; Renumbered from 635-004-0025, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0225

Bait Restrictions

It is unlawful to use lamprey as bait in any commercial fishery.

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

Stats. Implemented: ORS 506.036, 506.109, 506.126 & 506.306

Hist.: DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; Renumbered from 635-004-0003, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0230

Same Trip Recreational and Commercial Fishing – When Unlawful

(1) It is unlawful for a vessel licensed pursuant to ORS 508.260 to be used to fish recreationally and commercially on the same fishing trip.

(2) Recreational fishing gear is legal to use in commercial fisheries provided it complies with the provisions specified in OAR 635-004-0235.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0235

Fishing Gear

(1) This regulation lists a complete set of legal gear types and associated general restrictions to take ocean food fish and Pacific halibut in the fisheries specified in this Division. However, most individual fishery sections in this Division contain additional gear regulations specific to those fisheries. Fishers should consult the specific section of the fishery they are interested in for additional regulations.

(2) It is unlawful to possess, deploy, haul, or carry on board a fishing vessel any fishing gear not listed in section (3) of this rule, or fishing gear not in compliance with the restrictions listed in section (4) of this rule, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(3) It is unlawful to take food fish for commercial purposes by any means except:

- (a) Hook-and-line gear, including, but not limited to handline, pole-and-line, reel-and-line and pole-reel-and-line;
- (b) Longlines and vertical hook and lines are permitted in the ocean;
- (c) Pots or traps are permitted in the ocean;
- (d) Dipnets of hoop or A-frame design;
- (e) Troll gear is permitted in the ocean;
- (f) Seines are permitted in the ocean for ocean food fish other than groundfish and for the taking of herring, sardine, and anchovy from the following inland waters:

(A) Columbia River westerly of the U.S. Highway 101 Astoria Bridge across the Columbia River;

- (B) Tillamook Bay;
- (C) Yaquina Bay;
- (D) Alsea Bay;
- (E) Winchester Bay; and

(F) Coos Bay.

(g) Trawl gear is permitted in the ocean for ocean food fish;

(A) Trawl gear may not be used with any other gear type on a single fishing trip.

(B) Trawl gear must meet the specifications specified in the Code of Federal Regulations Title 50, Section 660.130.

(h) Set nets with an experimental gear permit pursuant to OAR 635-006-0020; or

(i) Spear.

(4) Longline, vertical hook-and-line and pot gear which is fixed or anchored to the bottom or drifting unattached to the vessel have the following restrictions:

(a) Gear shall not be left unattended for more than seven days;

(b) Longline and pot gear shall be marked at the surface at each terminal end with a pole, flag, light, radar reflector, and a buoy showing clear identification of the owner or vessel operator;

(c) Vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within 1/4 nautical mile as determined by electronic navigational equipment, of its vertical hook-and-line gear; and

(d) Pot gear used for other than Dungeness crab or hagfish shall have biodegradable escape panels constructed with #21 or smaller, untreated cotton twine in such manner that an opening of at least eight inches in diameter will result when the twine deteriorates.

(5) A buoy used to mark fixed gear under subsection (3)(b) of this rule must be marked with a number clearly identifying the owner or vessel operator. The number may be either:

(a) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(b) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-010-0555; FWC 166, f. & ef. 12-23-77; FWC 34-1979, f. & ef. 8-22-79, Renumbered from 635-036-0280; FWC 10-1983, f. & ef. 3-1-83; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 123-1989, f. 12-19-89, cert. ef. 1-1-90; FWC 112-1990, f. 10-3-90, cert. ef. 10-5-90; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 51-1995, f. 6-16-95, cert. ef. 6-19-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; Renumbered from 635-004-0035, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0240

Fishery Defined

"Far Offshore Fishery" means a fishery where the fish are taken outside the United States 200-mile Exclusive Economic Zone.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.138, 496.162, 506.119 & 506.129

Hist.: FWC 109-1991(Temp), f. & cert. ef. 9-27-91; FWC 10-1992, f. 2-26-92, cert. ef. 2-27-92; Renumbered from 635-004-0125, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0245

Commercial Vessel License - Right to Land Fish

Fish taken in a far offshore fishery which may be lawfully imported into this state from a foreign nation or from another state, may be landed in this state, provided Oregon commercial fishing license requirements and the provisions contained in OAR 635-004-0250 through 635-004-0265 have been met.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.119 & 506.129

Stats. Implemented: ORS 496.138, 496.162, 506.109, 506.119 & 506.129

Hist.: FWC 109-1991(Temp), f. & cert. ef. 9-27-91; FWC 10-1992, f. 2-26-92, cert. ef. 2-27-92; Renumbered from 635-004-0130, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0250

Declaration

(1) The vessel operator of any vessel participating in the far offshore fishery intending to land fish or fish products in Oregon shall notify the Department of any such fishing trip at least 48 hours prior to leaving port by writing to the Oregon Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR 97365, or by calling 541-867-4741 during regular business hours Monday through Friday. Such declaration shall include the area to be fished and the intended port of landing, including the identification of the processor to whom delivery will be made.

(2) In addition, 24 hours or more prior to landing, the vessel operator shall notify the Department, at the telephone number listed above, during regular business hours, or the Oregon State Police at other times, telephone number 1-800-452-7888, of the following:

- (a) Vessel name and documentation number;

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- (b) Estimated time of arrival;
- (c) Port of landing;
- (d) Processor's location; and
- (e) Estimated weight of fish on board.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.138, 496.162, 506.109, 506.119 & 506.129
Hist.: FWC 109-1991(Temp), f. & cert. ef. 9-27-91; FWC 10-1992, f. 2-26-92, cert. ef. 2-27-92; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-004-0135, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0255

Compliance Evidence

It shall be the responsibility of the vessel operator to maintain a navigation plotting record of any far offshore fishing trip, and such record shall be available for inspection by any person authorized to enforce the commercial fishing laws of Oregon. Such record shall be maintained for 30 days following any such fishing trip.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.138, 496.162, 506.109, 506.119 & 506.129
Hist.: FWC 109-1991(Temp), f. & cert. ef. 9-27-91; FWC 10-1992, f. 2-26-92, cert. ef. 2-27-92; Renumbered from 635-004-0140, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0260

Trip Limit

Except for the licensing requirements provided in OAR 635-004-0245, there are no trip limits or landing restrictions for fish or fish products taken in the far offshore fishery.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.138, 496.162, 506.109, 506.119 & 506.129
Hist.: FWC 109-1991(Temp), f. & cert. ef. 9-27-91; FWC 10-1992, f. 2-26-92, cert. ef. 2-27-92; Renumbered from 635-004-0145, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0265

Fishing Within 200-Mile Fishery Zone — When Unlawful

It is unlawful for the operator of any vessel to fish in or land fish from the 200-mile Exclusive Economic Zone or from state waters during any trip for which a declaration to participate in the far offshore fishery has been made.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.138, 496.162, 506.109, 506.119, 506.129 & 506.306
Hist.: FWC 109-1991(Temp), f. & cert. ef. 9-27-91; FWC 10-1992, f. 2-26-92, cert. ef. 2-27-92; Renumbered from 635-004-0150, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0270

Organization of Rules

Administrative rules contained in OAR 635-004-0275 through 635-004-0280 shall apply to all fisheries in the Groundfish Section, and are in addition to and not in lieu of Division 004, General Regulations contained in OAR 635-004-0200 through 635-004-0265. The Groundfish Section includes regulations for Trawl and Fixed Gear groundfish fisheries, and the Black Rockfish / Blue Rockfish / Nearshore Fishery.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0275

Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

- (a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2011 ed.);
- (b) Federal Register Vol. 76, No. 43, dated May 11, 2011 (76 FR 27508);
- (c) Federal Register Vol. 76, No. 231, dated December 1, 2011 (76 FR 74725);
- (d) Federal Register Vol. 76, No. 239, dated December 13, 2011 (76 FR 77415);
- (e) Federal Register Vol. 76, No. 245, dated December 21, 2011 (76 FR 79122);
- (f) Federal Register Vol. 77, No. 74, dated April 17, 2012 (77 FR 22679); and

(g) Federal Register Vol. 77, No. 80, dated April 25, 2012 (77 FR 24635).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where federal 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.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

[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, 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0280

Maintaining Records of Cumulative Catch

Vessels landing groundfish under a cumulative catch limit shall keep copies of fish landing receipts on board for inspection by authorized enforcement officials for a minimum of 90 days from date of delivery. Receipts shall be signed and dated by both the dealer representative and vessel operator. Fish landing receipts may be in the form of Department Fish Receiving Tickets; fish dealer "dock tickets" identified with official dealer logo's or other identifying letterhead; or official Fish Receiving Tickets from other states.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-004-0048, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0285

Fisheries Defined

"Trawl and Fixed Gear Groundfish Fisheries" means the commercial fisheries for groundfish species as defined in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50 Part 660, using trawl and fixed gear as defined in OAR 635-004-0215.

Stat. Auth.: ORS 506.036, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0290

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel from which groundfish are taken by means of trawl (including a shrimp trawl net), longline, hook-and-line, or pot gear.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered as confidential.

(6) Logbooks shall be completed for a fishing trip within one week of landing.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.129 & 506.450 through 506.465
Hist.: FC 246, f. 5-5-72, ef. 5-15-72. Renumbered from 625-010-0570; FWC 34-1979, f. & ef. 8-22-79, Renumbered from 635-036-0295; FWC 15-1984, f. & ef. 4-5-84; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-004-0050, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0295

Fishery Defined

"Black Rockfish/Blue Rockfish/Nearshore Fishery" means the commercial fishery for black rockfish (*Sebastes melanops*), blue rockfish (*Sebastes mystinus*) and nearshore species as defined in OAR 635-004-0215.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.129, 506.450 through 506.465
Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; Renumbered from 635-004-0160, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-004-0300

Requirement for Black Rockfish/Blue Rockfish/Nearshore Fishery Permit

(1) Except as provided in OAR 635-004-0360, it is unlawful to take, land or possess black or blue rockfish without a Black Rockfish/Blue Rockfish Permit or black rockfish, blue rockfish or nearshore species without a Black Rockfish/Blue Rockfish or Black Rockfish/Blue Rockfish with a Nearshore Endorsement Permit pursuant to ORS 508.945.

(2) It is unlawful for a wholesaler, canner or buyer to buy or receive black rockfish, blue rockfish or other nearshore species taken in the Black Rockfish / Blue Rockfish/Nearshore Fishery from a vessel for which the permit required by section (1) of this rule has not been issued.

(3) A Black Rockfish/Blue Rockfish/Nearshore Fishery Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and vessel license required by ORS 508.235 and ORS 508.260.

(4) No vessel may hold more than one Black Rockfish/Blue Rockfish/Nearshore Fishery Permit at any one time.

(5) Unless otherwise provided, Black Rockfish/Blue Rockfish /Nearshore Permits must be purchased by January 1 of the year the permit is sought for renewal.

(6) Applications for Black Rockfish/Blue Rockfish/Nearshore Fishery Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of vessel may be required at the time of application.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.945
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0305

Permit Fee

(1) The annual fee for a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit is \$100.00 (plus a \$2.00 license agent fee). See ORS 508.949.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-004-0330. See ORS 508.957.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.119 & 508.949
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0310

Eligibility Requirements for a Permit

(1) Vessel owners must meet eligibility requirements for a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit established in ORS 508.947.

(2) An individual is eligible to obtain a Black Rockfish/Blue Rockfish/Nearshore Permit required by OAR 635-005-0300:

(a) By renewal of the previous year's permit as specified in OAR 635-004-0320; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-004-0325.

(3) In making determinations regarding issuance or renewal of a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.947
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0315

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit established pursuant to OAR 635-004-0300, 635-004-0320 and 635-004-0330 is denied may make written request to the Board for review of the denial. The procedure for requesting review and the applicable standard of review of denial for a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit shall be pursuant to ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in the Black Rockfish/Blue Rockfish/Nearshore Fishery in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(3) The Black Rockfish/Blue Rockfish/Nearshore Fishery requires a \$125 non-refundable application fee for Board review. However, if the

Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to ORS 183.550.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.960
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0320

Renewal of Permit

(1) Black Rockfish/Blue Rockfish/Nearshore Fishery Permits may be renewed the following year:

(a) By submitting a \$100.00 fee (plus \$2.00 license agent fee) and a complete application to the Department date-stamped or postmarked by January 1 of the year the permit is sought for renewal; and

(b) If the provisions specified in ORS 508.957 have been met.

(2) An application for renewal of a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit shall be considered complete if it is legible, has all information requested in 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 December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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 may not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 508.947 & 508.949
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0325

Lottery for Limited Entry Black Rockfish/Blue Rockfish/Nearshore Fishery Permits

(1) If the number of permits issued in accordance with OAR 635-004-0300 falls below 80 for Black Rockfish and Blue Rockfish Permits or 50 permits for Black Rockfish and Blue Rockfish Permits with a Nearshore Endorsement, the Department in the next succeeding calendar year may issue Black Rockfish/Blue Rockfish/Nearshore Fishery Permits by a lottery system pursuant to ORS 508.955. However, the total number of permits issued may not exceed 80 for Black Rockfish and Blue Rockfish Permits or 50 Black Rockfish and Blue Rockfish Permits with a Nearshore Endorsement.

(2) A vessel may qualify for the lottery if the vessel:

(a) Has a boat licensed issued pursuant to ORS 508.260 for the current year; and

(b) Had a boat license issued pursuant to ORS 508.260 for the previous year.

(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 lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline may 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 March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.955
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0330

Transferability of Permits

(1) Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void.

(2) Black Rockfish/Blue Rockfish/Nearshore Fishery Permit holders may transfer a permit pursuant to ORS 508.957.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.957
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-004-0335

Logbook Required

(1) The Department shall make available a logbook to each vessel owner that has a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit.

(2) Each vessel owner is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel owner shall permit examination and transcription of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel owner shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.953
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0340

Fishing Gear

(1) Except as provided in OAR 635-004-0360, it is unlawful to take Black Rockfish/Blue Rockfish/Nearshore Fishery species by any means other than:

(a) Hook-and-line gear; or

(b) Pot gear may be used if a Developmental Fisheries Permit for nearshore species using pot gear was issued in 2003. Pot gear shall be limited to a maximum of 35 pots.

(2) It is *unlawful* to take black rockfish, blue rockfish, or nearshore species using dive gear.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; Renumbered from 635-004-0165, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0345

Length Limits

The minimum length limit for rockfish, greenling, and cabezon taken for commercial purposes by means of non-trawl fishing gear is 12 inches for grass, China, copper, and quillback rockfish and greenling, and 16 inches for cabezon.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 117-2002, f. & cert. ef. 10-21-02; Renumbered from 635-004-0021, DFW 75-2012, f. 6-28-12

635-004-0350

Harvest and Landing Caps

(1) For 2012, the commercial harvest cap for black rockfish and cabezon are:

- (a) Black rockfish: 139.2 metric tons; and
- (b) Cabezon: 30.8 metric tons.

(2) For 2012, the commercial landing caps for black rockfish, blue rockfish and other nearshore species are:

- (a) Black rockfish, 137.9 metric tons;
- (b) Black rockfish and blue rockfish combined: 141.9 metric tons;
- (c) Other nearshore rockfish, 14.3 metric tons;
- (d) Cabezon, 30.5 metric tons; and
- (e) Greenling, 23.4 metric tons.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0355

Trip Limits

(1) The trip limits outlined in this rule are set at the beginning of each calendar year based on commercial harvest caps and projected fishing effort, and are subject to in-season adjustments and closures. Fishers should refer to Nearshore Commercial Fishery Industry Notices on the Marine Resources Program Commercial Fishing Rules and Regulations webpage for the most up-to-date information regarding trip limits and other regulations affecting the Nearshore Commercial Fishery.

(2) For black and blue rockfish combined, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit, with or without a Nearshore Endorsement, may land no more than the following cumulative trip limits:

- (a) 800 pounds in period 1;
- (b) 1,000 pounds in period 2;
- (c) 1,400 pounds in each of periods 3 and 4;
- (d) 1,000 pounds in period 5; and

(e) 800 pounds in period 6.

(3) For all other nearshore species, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit with Nearshore Endorsement may land no more than the following cumulative trip limits in each period:

- (a) 700 pounds of other nearshore rockfish combined;
- (b) 1,500 pounds of cabezon; and
- (c) 250 pounds of greenling species.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0360

Incidental Catch in Other Fisheries

A vessel may land black rockfish, blue rockfish, and nearshore species without a permit or endorsement required by OAR 635-004-0300 if the vessel operator:

(1) For only one landing per day, lands no more than 15 pounds of a combination of black rockfish, blue rockfish and nearshore species, as defined in OAR 635-004-0215, and if the black rockfish, blue rockfish and nearshore species:

(a) Make up 25 percent or less of the total poundage of the landing; and

(b) Are taken with legal groundfish fishing gear.

(2) Operates a vessel that holds a valid Black Rockfish/Blue Rockfish Permit without a Nearshore Endorsement and:

(a) For only one landing per day, lands no more than 15 pounds of nearshore species, as defined in OAR 635-004-0215;

(b) The nearshore species make up 25 percent or less of the total poundage of the landing; and

(c) The nearshore species are taken with gear that is legal to use in the Black Rockfish/Blue Rockfish/Nearshore Fishery.

(3) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the vessel lands black rockfish, blue rockfish or a combination of black and blue rockfish in the same landing in which the vessel lands a salmon under the permit required by ORS 508.801 to 508.825. The black and blue rockfish landed under this subsection must be landed dead. A vessel who lands black rockfish and blue rockfish under this section may land up 100 pounds of black and blue rockfish in aggregate, per landing. When an aggregate incidental catch of black and blue rockfish in the salmon troll fishery reaches 3,000 pounds in a calendar year, the trip limit listed in section (2) of this rule shall be reduced to 15 pounds of black and blue rockfish in aggregate, per trip.

(4) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black and blue rockfish in aggregate per calendar year, and if the black and blue rockfish:

(a) Make up 25 percent or less of the total poundage of each landing; and

(b) Are landed dead.

(5) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish.

(6) Does not exceed trip limits as established in OAR 635-004-0355, and OAR 635-004-0365.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; 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; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-004-0170, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0365

Black Rockfish Management Areas

In addition to catch restrictions set forth in the Code of Federal Regulations, Title 50 Part 660, OAR 635-004-0355 and 635-004-0360, the following trip limit applies to black rockfish taken with all commercial gears except trawl:

(1) It is unlawful to take or retain more than 300 pounds of black rockfish per vessel from a single fishing trip within one of the following areas:

(a) Tillamook Head (45°56'45" N latitude) to Cape Lookout (45°20'15" N latitude);

(b) Cascade Head (45°03'50" N latitude) to Cape Perpetua (44°18' N latitude);

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(c) From a point (43°30' N latitude), approximately 8 1/2 nautical miles north of the Coos Bay north jetty, to a point (43°03' N latitude) adjacent to the mouth of Four-mile Creek;

(d) Mack Arch (42°13'40" N latitude) to the Oregon-California border (42°00' N latitude).

(2) No vessel shall take, retain, possess, or land more than the allowed trip limit when fishing occurs for any species of fish within one of these restricted areas.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 117-2002, f. & cert. ef. 10-21-02; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10; Renumbered from 635-004-0036, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0370

Organization of Rules

(1) Administrative rules contained in OAR 635-004-0375 shall apply to all fisheries in the Coastal Pelagic and Smelt Species section, and are in addition to and not in lieu of Division 004 General Regulations contained in OAR 635-004-0200 through OAR 635-004-0265. The Coastal Pelagic and Smelt Species Section includes regulations for the Sardine, Inland Waters Herring, Yaquina Bay Roe-Herring, Pacific Ocean Herring, Anchovy and Smelt Fisheries.

(2) Market squid are managed under the Coastal Pelagic Species Fishery Management Plan and through the regulations adopted by reference in OAR 635-004-0375. However, market squid are managed as a shellfish when landed in Oregon, and are subject to regulations in the Squid Fishery Section in Division 005.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0375

Scope, Inclusion, and Modification of Rules

(1) The commercial coastal pelagic species fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking coastal pelagic species. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subpart I, (October 1, 2010 ed.); and

(b) Federal Register Vol. 76, No. 101, dated May 25, 2011 (76 FR 30267).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable coastal pelagic species fishing requirements. Where federal 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.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0380 through 635-004-0545 for additions or modifications to federal coastal pelagic species 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, 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0380

Fishery Defined

"Sardine fishery" means the commercial fishery for Pacific sardine (*Sardinops sagax*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0385

Requirement for Sardine Permit

(1) It is unlawful to take, land or possess sardines from the Pacific Ocean without first obtaining a Sardine Permit issued pursuant to OAR 635-004-0390 through 635-004-0415. The Sardine Permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(2) It is unlawful for a wholesaler, canner or buyer to buy or receive sardines taken in the sardine fishery from a vessel for which the permit required by section (1) of this rule has not been issued.

(3) The Department may issue not more than 26 permits required by section (1) of this rule.

(4) A Sardine Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and ORS 508.260.

(5) No vessel may hold more than one Oregon Sardine Permit at any one time.

(6) Unless otherwise provided, Sardine Permits must be purchased by December 31 of the year the permit is sought for renewal.

(7) Applications for Sardine Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0390

Permit Fee

(1) The annual fee for a Sardine Permit is \$100.00 (plus a \$2.00 license agent fee) for applicants.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-004-0415.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0395

Eligibility Requirements for a Permit

(1) An individual or entity is eligible to obtain a Sardine Permit required by OAR 635-004-0385:

(a) If issued a Sardine Permit under the Developmental Fisheries Program in 2005;

(b) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(c) Lawfully landed:

(A) At least 1,500 metric tons or 35 deliveries in any one year from 2000 through 2004; or

(B) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

(2) If the number of permits issued under section (1) of this rule is less than 20, enough permits to reach a total of 20 may be issued under section (3) of this rule to vessels in order of highest total number of deliveries during 2000-2004.

(3) An individual or entity is eligible to obtain a Sardine Permit under section (2) of this rule if the vessel for which applications is made:

(a) Was not issued a permit under section (1) of this rule; and

(b) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(c) Lawfully landed:

(A) At least 1,500 metric tons or 35 deliveries in any one year from 2000 through 2004; or

(B) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

(4) 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.

(5) An individual or entity is eligible to obtain a Sardine Permit required by OAR 635-004-0385:

(a) By renewal of the previous year's permit as specified in OAR 635-004-0405; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-004-0410.

(6) In making determinations regarding issuance or renewal of a Sardine Permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-004-0400

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Sardine Permit established pursuant to OAR 635-004-0385, 635-004-0405 and 635-004-0410 is denied may make written request to the Board for review of the denial. The review provided in this section is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(2) The Board shall review a denial of an application for renewal or request to transfer a Sardine Permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of Sardine Permits if the Board finds that strict adherence to these requirements were not met as a result of undue hardship as defined in OAR 635-004-0215.

(3) A party, including the Department, must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(4) The Board may delegate to the Department its authority to waive requirements for renewal of Sardine Permits in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(5) The sardine fishery requires a \$125 non-refundable application fee for Board review. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0405

Renewal of Permit

(1) Sardine Permits may be renewed for the following year:

(a) By submitting a \$100.00 fee (plus a \$2.00 license agent fee) and a complete application to the Department date-stamped or postmarked by December 31 of the year the permit is sought for renewal; and

(b) If all logbooks required under OAR 635-004-0420 were submitted;

(2) An application for renewal of a Sardine Permit shall be considered complete if it is legible, has all information requested in 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 December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0410

Lottery for Limited Entry Sardine Permits

(1) If the number of Sardine Permits issued in accordance with OAR 635-004-0385 falls below 24, the Department in the next succeeding calendar year may issue Sardine Permits by a lottery system. However, as a result of such a lottery, the total number of Sardine Permits issued may not exceed 26.

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) 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.

(4) Only one application per vessel may be submitted for each permit fishery lottery.

(5) Any application which is not legible, has incomplete information, or is postmarked after the deadline shall 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 March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0415

Transferability of Permits

(1) Any transfer of a Sardine Permit away from a vessel without the written consent of each person holding a security interest in such vessel is void.

(2) Sardine Permits are transferable up to two times in one calendar year.

(3) Applications to transfer a Sardine Permit shall only be accepted to 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 sardines are not eligible for transfer.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0420

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel which holds a valid Sardine Permit.

(2) The permit holder is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the permit holder shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the permit holder shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0425

Fishing Gear

A grate with spacing no larger than 2-3/8 inches between the bars must be placed over the intake of the hold of the vessel to sort out larger species of fish.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; Renumbered from 635-004-0011, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0430

Sardine Catching Vessel

(1) Only a sardine catching vessel may pump fish onboard, directly from the pursed seine of another sardine catching vessel, and lawfully land that catch.

(2) Any sardine catching vessel involved in pumping fish from the pursed seine of another sardine catching vessel must have onboard legal seine gear capable of catching sardine including, but not limited to seine net, skiff, and pumping gear. All gear must be in working order.

(3) Any sardine catching vessels involved in pumping fish from a pursed seine with other sardine catching vessels shall document in the logbooks required under OAR 635-004-0420 the vessel(s) that made the set, any other vessel(s) pumping fish from the pursed seine, as well as all appropriate information on catch and location.

(4) No more than 20% of the landings made by a sardine catching vessel may contain fish pumped from pursed seines of other sardine catching vessels.

(5) For the purposes of this rule, "Sardine catching vessel" means a vessel holding a valid Sardine Permit pursuant to OAR 635-004-0385 that lawfully deployed purse seine gear during the current year and pumped resultant catch onboard the same vessel for delivery to a port of landing or fish dealer.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 38-2009, f. & cert. ef. 4-22-09; Renumbered from 635-004-0012, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0435

Bycatch Restriction

All groundfish and salmon, as defined by OAR 635-004-0215, must be returned to the water immediately. Every effort must be made to dipnet salmon out of the seine net before they go through a pump system.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; Renumbered from 635-004-0013, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

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635-004-0440

No Directed Reduction Fishery Allowed

(1) No more than ten percent of a sardine landing may be used for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products or by-products for purposes other than human consumption or fishing bait.

(2) Exceptions to the limit in section (1) of this rule may be granted due to unforeseen circumstances with written authorization by the Director to avoid wastage of fish.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 142-2008, f. & cert. ef. 11-21-08;

Renumbered from 635-004-0014, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0445

Fishery Defined

“Inland waters herring fishery” means the commercial fishery for Pacific herring (*Clupea harengus pallasii*) in bays and estuaries.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0450

Inland Waters Herring Season

The following are season restrictions for the commercial taking of herring in inland waters:

(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, herring may be taken for roe January 1 through April 15 pursuant to OAR 635-004-0455 through 635-004-0505.

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

Stats. Implemented: ORS 506.109 & 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; Administrative correction 5-20-09; DFW 153-2009(Temp), f. 12-23-09, cert. ef. 1-1-10 thru 4-15-10; Administrative correction 4-21-10; DFW 2-2012(Temp), f. & cert. ef. 1-9-12 thru 4-15-12; Administrative correction, 5-25-12; Renumbered from 635-004-0027, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0455

Fishery Defined

“Yaquina Bay Roe-Herring fishery” means the commercial fishery for Pacific herring (*Clupea harengus pallasii*) open annually between January 1 and April 15 in Yaquina Bay.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0460

Requirement for Yaquina Bay Roe-Herring Permit

(1) It is unlawful to take, land or possess herring in the Yaquina Bay roe-herring fishery without first obtaining a Yaquina Bay Roe-Herring Permit issued pursuant to OAR 635-004-0465 through 635-004-0495.

(2) It is unlawful for a wholesaler, canner or buyer to buy or receive herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1) of this section has not been issued.

(3) A Yaquina Bay Roe-Herring Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and ORS 508.260.

(4) No vessel may hold more than one Yaquina Bay Roe-Herring Permit at any one time.

(5) No individual may hold more than one Yaquina Bay Roe-Herring Permit at any one time.

(6) Unless otherwise provided, Yaquina Bay Roe-Herring Permits must be purchased by December 31 of the year the permit is sought for renewal.

(7) Applications for Yaquina Bay Roe-Herring Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0465

Permit Fee

(1) The annual fee for a Yaquina Bay Roe-Herring Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.765.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-004-0495. See ORS 508.765.

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

Stats. Implemented: ORS 506.109, 506.129 & 508.765

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0470

Eligibility Requirements for a Permit

(1) Individuals must meet eligibility requirements for a Yaquina Bay Roe-Herring Permit found in these rules.

(2) An individual licensed under ORS 508.235 is eligible to obtain a Yaquina Bay Roe-Herring Permit required by OAR 635-005-0460:

(a) By renewal of the previous year's permit as specified in OAR 635-004-0485; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-004-0490.

(3) In making determinations regarding issuance or renewal of a Yaquina Bay Roe-Herring Permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0475

Revocation and Refusal to Issue Permits

The Commission may revoke and refuse subsequent issuance of a Yaquina Bay Roe-Herring Permit pursuant to ORS 508.485 and 508.490.

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

Stats. Implemented: ORS 506.109, 506.129 & 508.765

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0480

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Yaquina Bay Roe-Herring Permit established pursuant to OAR 635-004-0460, 635-004-0485 and 635-004-0495 is denied may make written request to the Board for review of the denial. The procedure for requesting review and the applicable standard of review of denial for a Yaquina Bay Roe-Herring Permit shall be as provided in ORS 508.765.

(2) For the Yaquina Bay roe-herring fishery, the Board may waive renewal requirements for permits if the Board finds that:

(a) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(b) Strict adherence to requirements were not met as a result of undue hardship as defined in OAR 635-004-0215.

(3) The Board may delegate to the Department its authority to waive requirements for renewal of Yaquina Bay Roe-Herring Permits in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(4) The Yaquina Bay roe-herring fishery requires a \$125 non-refundable application fee for Board review. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

(5) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

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

Stats. Implemented: ORS 506.109, 506.129 & 508.765

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0485

Renewal of Permit

(1) Yaquina Bay Roe-Herring Permits may be renewed by submission to the Department of a \$125.00 fee (plus a \$2.00 license agent fee) for resident applicants and \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application date-stamped or postmarked by December 31 of the year the permit is sought for renewal.

(2) An application for renewal of a Yaquina Bay Roe-Herring Permit shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application

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which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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 may not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.765
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0490

Lottery for Limited Entry Yaquina Bay Roe-Herring Permits

(1) If the number of Yaquina Bay Roe-Herring Permits issued in accordance with OAR 635-004-0460 falls below six, the Department in the next succeeding calendar year may issue Yaquina Bay Roe-Herring Permits by a lottery system. However, as a result of any such lottery, the total number of Yaquina Bay Roe-Herring Permits issued may not exceed six;

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) 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.

(4) Only one application per vessel may be submitted for each permit fishery lottery.

(5) Any application which is not legible, has incomplete information, or is postmarked after the deadline shall 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 March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.765
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0495

Transferability of Permits

(1) Any transfer of a Yaquina Bay Roe-Herring Permit without the written consent of each person holding a security interest in such permit is void.

(2) A Yaquina Bay Roe-Herring Permit is transferable to:

(a) A replacement vessel of the permit holder; or, upon request of a permit holder, the Department may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. "Replacement vessel" means a vessel purchased to replace a permitted vessel which had been lost due to fire, capsizing, sinking or other event;

(b) The purchaser of the vessel when the vessel is sold.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.765
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0500

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel which holds a valid Yaquina Bay Roe-Herring Permit.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.765
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0505

Roe-Herring Season and Harvest Limit

(1) The open season for the taking of herring for roe in Yaquina Bay is January 1 through April 15.

(2) The yearly commercial harvest cap for the Yaquina Bay commercial roe herring fishery 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. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(3) 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.

(4) During the period January 1 through April 15 it is unlawful to:

(a) Fish commercially from midnight Friday through midnight Sunday with nets; and

(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; or eggs-on-kelp method.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0510

Fishery Defined

"Pacific Ocean herring fishery" means the commercial fishery for Pacific herring (*Clupea harengus pallasii*) in the Pacific Ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0515

Pacific Ocean Herring Season

There is no closed season for the commercial taking of herring in the Pacific Ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FWC 50-1979, f. & ef. 11-1-79; Renumbered from 635-004-0026, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0520

Logbook Required

(1) The Department shall make available a logbook to each commercial fishing vessel licensed to take Pacific Ocean herring.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0525

Fishery Defined

"Anchovy fishery" means the commercial fishery for Northern anchovy (*Engraulis mordax*) in the Pacific Ocean, the Columbia River and the bays and estuaries outlined in OAR 635-004-0530(1).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0530

Inland Waters Anchovy Fishery

(1) Anchovies may be harvested by commercial vessels in Tillamook, Yaquina, Winchester, and Coos Bays to be used as live bait in commercial fishing operations by the catching vessel from July 1 through October 31.

(2) Any vessel engaged in the commercial taking of anchovies must obtain a boat license or commercial bait fishing license as required by ORS 508.260 and ORS 508.312.

(3) Any person engaged in or assisting in the taking of anchovies from the waters of this state must possess a commercial fishing license or bait fishing license as required by ORS 508.235 and ORS 508.312.

(4) It is unlawful to use any fishing gear or method of harvest for the taking of anchovy 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;

(b) Lampara net; or

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(c) Hook and line.

(5) All species other than anchovies, taken in operation of gear authorized by this rule, must be returned to the water immediately unharmed.

(6) Fishers intending to fish as described above must notify Oregon State Police 12 hours prior to fishing by calling 1-800-452-7888. Notification shall include vessel name and number, fishing location, and estimated time of activity.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 46-2009(Temp), f. 5-6-09, cert. ef. 6-1-09 thru 11-1-09; DFW 91-2009, f. & cert. ef. 8-10-09; Runumbered from 635-004-0042, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0535

Logbook Required

(1) The Department shall make available a logbook to each individual or commercial fishing vessel permitted pursuant to OAR 635-004-0530 to harvest anchovies for live bait.

(2) Each individual or vessel operator is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the individual or vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the individual or vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0540

Fishery Defined

“Smelt fishery” means the commercial fishery for all species in the family Osmeridae in the Pacific Ocean and Columbia River.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0545

Prohibitions

(1) Smelt may be taken for commercial purposes from the Columbia River described in OAR 635-042-0130.

(2) The targeted take of smelt for commercial purposes is prohibited at all times.

(3) Incidentally caught smelt may be landed by vessels targeting other commercial species in the Pacific Ocean, and shall not exceed 1% of landing by weight.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 290(75-3), f. 2-20-75, ef. 3-11-75, Renumbered from 625-0100-210; FWC 16-1979, f. & ef. 4-27-79, Renumbered from 635-036-0140; FWC 83-1985, f. 12-17-85, ef. 12-18-85; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; Renumbered from 635-004-0070, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0550

Organization of Rules

Administrative rules contained in OAR 635-004-0555 shall apply to all fisheries in the Highly Migratory Species Section, and are in addition to and not in lieu of Division 004 General Regulations contained in OAR 635-004-0200 through OAR 635-004-0265. The Highly Migratory Species Section includes regulations for the Albacore Tuna Fishery.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0555

Scope, Inclusion, and Modification of Rules

(1) The commercial highly migratory species fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking highly migratory species. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subpart K, (October 1, 2011 ed.); and

(b) Federal Register Vol. 76, No. 177, dated September 13, 2011 (76 FR 56327).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable highly migratory species fishing equipments. The area that federal regulations apply to is hereby extended to the area from shore to three nautical miles from shore, coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR -004-0205 through 635-004-0235 and 635-004-0560 through 635-004-0570 for additions or modifications to federal coastal pelagic species 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, 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0560

Fishery Defined

“Albacore tuna fishery” means the commercial fishery for albacore tuna (*Thunnus alalunga*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0565

License Required

(1) Vessels electing to take, land or possess only albacore tuna for commercial purposes in a calendar year in Oregon may purchase an Albacore Tuna Landing License in lieu of commercial fishing, crewmember, and boat licenses.

(a) Vessels which hold an Albacore Tuna Landing License are considered commercial fishing vessels for the purposes of U.S. Coast Guard Commercial Fishing Vessel Safety Requirements, law enforcement and fishery management.

(b) An Albacore Tuna Landing License is not required to take, land or possess albacore tuna for vessels licensed pursuant to ORS 508.260 and individuals licensed pursuant to ORS 508.235.

(2) Application for this license may be made and fee paid at time of first calendar year albacore tuna landing into Oregon or at any Department marine field office or Salem Headquarters office, on a Department license application form.

(3) Fees for an Albacore Tuna Landing License are as follows:

(a) Vessels that hold a valid commercial fishing license from another state: \$20.00 (plus a \$2.00 license agent fee).

(b) Vessels that do not hold a valid commercial fishing license from another state and all foreign vessels: \$125.00 (plus a \$2.00 license agent fee).

(4) An Albacore Tuna Landing License allows unlimited landings of albacore tuna by the vessel during the calendar year of issuance.

(5) Albacore Tuna Landing Licenses are not transferable.

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

Stats. Implemented: ORS 506.109, 506.129, 508.285 & 508.300

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0570

Exemption to Far Offshore Fishery Restriction

Albacore tuna vessel operators are exempt from Far Offshore Fishery regulations pursuant to OAR 635-004-0240 through 635-004-0265 for fishing for or landing albacore tuna only.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0575

Organization of Rules

The Other Finfish Section includes regulations for Halibut, Coastal Rivers Shad, Hagfish, Sturgeon, Surfperch, Minor Finfish and Intertidal Animal Fisheries.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-004-0580

Fishery Defined

"Halibut fishery" means the commercial fishery for Pacific halibut (*Hippoglossus stenolepis*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0585

Scope, Inclusion, and Modification of Rules

(1) The commercial Pacific halibut fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon, the federal government, and the International Pacific Halibut Commission (IPHC). The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking Pacific halibut. However, additional federal regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subpart E, (October 1, 2011 ed.); and

(b) Federal Register Vol. 77, No. 56, dated March 22, 2012 (77 FR 16740).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable Pacific halibut fishing requirements. The area that federal regulations apply to is hereby extended to the area from shore to three nautical miles from shore, coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence.

(4) It is unlawful to take Pacific halibut for commercial purposes except as set by federal regulations and the IPHC and in accordance with a valid permit issued by the IPHC.

[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 469.162, 506.109, 506.129 & 508.306

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0590

Fishery Defined

"Coastal rivers shad fishery" means the commercial fishery for American shad (*Alosa sapidissima*) in the bays and rivers specified in OAR 635-004-0595.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0595

Closed Season

(1) It is unlawful to take shad for commercial purposes from the inland waters of this state other than:

(a) The Columbia River as provided in OAR 635-042-0105 through 635-042-0110.

(b) The Coquille, Siuslaw, Umpqua and Smith Rivers from 6 a.m. May 10 to 6 a.m. July 1 of each year in the area not otherwise closed by ORS 511.506.

(2) Shad eight inches or less in length may be taken for commercial purposes incidentally in the Inland Waters herring baitfish fishery when legally seining for herring as defined in OAR-635-004-0450.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 272(74-4), f. 3-20-74, ef. 4-11-74; FC 275(74-8)(Temp), f. & cert. ef. 4-19-74, Renumbered from 625-010-0615, Renumbered from 635-036-0300; FC 275(74-8), f. 4-19-74, cert. ef. 5-11-74, Renumbered from 625-010-0615, Renumbered from 635-036-0300; FWC 77-1984, f. 11-28-84, ef. 12-1-84; DFW 112-2003, f. & cert. ef. 11-14-03; Renumbered from 635-004-0055, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0600

Fishing Gear

(1) It is unlawful to take shad for commercial purposes by any means other than:

(a) Gillnets or set nets of a mesh size not less than five inches nor more than 6-1/2 inches in the Coquille and Siuslaw Rivers;

(b) Gillnets having a mesh size of not less than six inches nor more than 6-3/4 inches in the Umpqua River; and

(c) Gillnets or set nets of a mesh size not less than six inches nor more than 6-3/4 inches in the Smith River.

(2) It is unlawful for a gillnet in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached vessel; left unattended at any time it is in operation; attended by more than one vessel while being fished; or for more than one gillnet to be fished from a licensed commercial fishing vessel at any one time.

(3) There shall be sufficient buoyancy in the corks and/or floats on the cork line of any gillnet so that said net shall be free to drift with the current. None of the lines used thereon shall be of metal or of any metallic substance or material. The lead or weight on the lead line of any gillnet shall not exceed two pounds in total weight on any one fathom, measurement to be taken along the cork line of said net. However, should extra or additional weight appear necessary or make practical the operation of any such net, permission to use in excess of two pounds-weight per fathom of net may be granted by the Commission to any duly licensed gillnet fisher upon written application which includes an adequate justification for the additional leads or weights of any kind attached to any part of such net except as herein provided.

(4) Before a fisher may fish a set net at any one location, the fisher must first register the site by providing a written description of the site location to the Department of Fish and Wildlife, Southwest Regional Office, 4192 N. Umpqua Highway, Roseburg, OR 97470.

(5) It is *unlawful* for a:

(a) Set net or gillnet to be used which is constructed of material having a breaking strength greater than ten pounds pull on any single mesh;

(b) Set net to be used which exceeds 300 feet in length;

(c) Set net or any part or portion thereof to be set or operated within a distance of 150 feet from any other set net or any part or portion thereof including the monument or marker to which attached;

(d) Set net to be set or operated in such a manner that the portion of the set net at right angles to the thread of the bay or river is at any time longer than one-third the measured distance across the bay or river. This distance to be measured from bank to bank at mean low water;

(e) Commercial fisher to register and operate more than six set net sites at any one time;

(f) Commercial fisher to fish a set net at a site which the fisher has not registered with the Department;

(g) Commercial fisher to fish a set net at a site which is not clearly marked with his or her commercial fishing license number on a substantial post or monument created for that purpose on the bank of the river or upon a buoy securely anchored on the site location.

(6) The size of mesh of any gillnet or set net is determined by placing any three meshes of such net, while wet from soaking in water for not less than an hour, under ten pounds vertical tension and then measuring while under such tension the distance between the inside of the knot of the middle mesh to the outside of the opposite vertical knot of the middle mesh.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 272(74-4), f. 3-20-74, ef. 4-11-74; FC 287(74-22), f. 11-27-74, ef. 12-25-74; FWC 91, f. 2-23-77, ef. 3-1-77, Renumbered from 625-010-0620, Renumbered from 635-036-0305; FWC 27-1980, f. & ef. 6-23-80; FWC 77-1984, f. 11-28-84, ef. 12-1-84; FWC 8-1985 (Temp), f. & ef. 2-19-85; FWC 50-1989, f. 7-28-89, cert. ef. 7-31-89; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-004-0060, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0605

Incidental Catch of Salmon and Striped Bass

(1) It is unlawful to possess any salmon or striped bass taken as an incidental catch under OAR 635-004-0590 through 635-004-0600.

(2) Any person fishing with a gill net or setnet for shad under OAR 635-004-0590 through 635-004-0600 who upon lifting, drawing, taking up, or removing any such net from the water finds salmon or striped bass entangled or caught therein must immediately and carefully release and return the salmon or striped bass to the water.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 272(74-4), f. 3-20-74, ef. 4-11-74; FWC 52, f. & ef. 3-26-76, Renumbered from 625-010-0625, Renumbered from 635-036-0310; FWC 77-1984, f. 11-28-84, ef. 12-1-84; FWC 28-1988(Temp), f. & cert. ef. 4-29-88; Renumbered from 635-004-0065, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0610

Fishery Defined

"Hagfish fishery" means the commercial fishery for Pacific hagfish (*Eptatretus stoutii*) and Black hagfish (*Eptatretus deani*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-004-0615

Pacific Hagfish Harvest Guideline

When landed annual catch approaches 1.6 million pounds of Pacific Hagfish, the Department Marine Resources Program will hold a public meeting to evaluate the fishery.

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

Stats. Implemented: ORS 469.162, 506.109 & 506.129

Hist.: DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-004-0066, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0620

Fishing Gear

(1) It is unlawful for a single commercial fishing vessel to possess, use, control or operate more than 200 hagfish pots. Pots may be fished individually or on common ground line.

(2) Pot gear used for hagfish shall include a biodegradable escape exit of at least three inches in diameter constructed with 120 thread size or smaller, untreated cotton twine or mild steel not to exceed 1/4-inch (six mm) in diameter or other materials approved by the Director.

(3) All other species of finfish and shellfish caught in hagfish pots authorized under this rule must be returned immediately to the water.

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

Stats. Implemented: ORS 469.162, 506.109, 506.129 & 506.306

Hist.: DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-004-0068, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0625

Logbook Required

(1) The Department shall make available a logbook to each commercial fishing vessel licensed to harvest hagfish.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0630

Fishery Defined

“Sturgeon fishery” means the commercial fishery for white sturgeon (*Acipenser transmontanus*) in the areas outlined in OAR 635-004-0635.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0635

Closures

(1) It is unlawful to take, land or possess white sturgeon (*Acipenser transmontanus*) for commercial purposes except in the:

(a) Columbia River, in the areas and during the times open to the taking of sturgeon for commercial purposes as provided in OAR 635-042-0135;

(b) Coquille and Siuslaw, in the areas and during the times open to the taking of shad for commercial purposes as provided in OAR 635-004-0595; and

(c) The Pacific Ocean at all times.

(2) It is unlawful to take, land or possess green sturgeon (*Acipenser medirostris*) for commercial purposes.

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

Stats. Implemented: ORS 506.109, 506.119, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0120, Renumbered from 635-036-0110; FWC 1-1981, f. & ef. 1-19-81; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10; Renumbered from 635-004-0080, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0640

Fishing Gear

It is unlawful to take sturgeon for commercial purposes by any means other than the commercial fishing gear authorized in the fishing area in which the sturgeon are taken, except setlines are permitted in the Columbia River.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.119, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0125, Renumbered from 635-036-0115; Renumbered from 635-004-0085, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0645

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; or

(c) To possess, sell, or transport any whole sturgeon under four feet in 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 subsection (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 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129 & 506.306

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; DFW 39-2009, f. & cert. ef. 4-27-09; Renumbered from 635-004-0090, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0650

Fishery Defined

“Surfperch fishery” means the commercial fisheries for calico surfperch (*Amphistichus koelzi*); redbtail surfperch (*A. rhodoterus*); kelp perch (*Brachystius frenatus*); shiner perch (*Cymatogaster aggregata*); striped seaperch (*Embiotoca lateralis*); spotfin surfperch (*Hyperprosopon anale*); walleye surfperch (*H. argenteum*); silver surfperch (*H. ellipticum*); white seaperch (*Phanerodon furcatus*); and pile perch (*Rhacophilus vacca*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0655

Closed Season

It is unlawful to take surfperch for commercial purposes from the Pacific Ocean from August 1 through September 30.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0660

Fishery Defined

“Minor finfish fisheries” means the commercial fisheries for the species listed in OAR 635-004-0665.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0665

Minor Finfish Species

(1) The following list of species is recognized by the Department as minor finfish species:

(a) Blue shark (*Prionace glauca*);

(b) Eelpouts (family *Zoarcoidea*);

(c) Pacific pomfret (*Brama japonica*);

(d) Pacific sandfish (*Trichodon trichodon*);

(e) Salmon shark (*Lamna ditropis*);

(f) Skilfish (*Erelepis zonifer*);

(g) Slender sole (*Eopsetta exilis*);

(h) Walleye pollock (*Theragra chalcogramma*); and

(i) Wolf-eel (*Anarrhichthys ocellatus*).

(2) It is unlawful to take, land or possess any of the species listed in section (1) of this rule without the proper licenses and permits described in ORS 508.025 through 508.312.

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

ADMINISTRATIVE RULES

Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0670

Logbook Required

(1) The Department shall make available a logbook to each commercial fishing vessel licensed to harvest any minor finfish species included in OAR 635-004-0665.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

(6) Those species listed in OAR 635-004-0665 are exempt from the logbook requirements of this rule when taken as a 'weighback species,' pursuant to OAR 635-006-0210.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0675

Fishery Defined

"Intertidal Animal Fishery" means the commercial fisheries for animals living intertidally on the bottom.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0680

Permit Required

(1) It is unlawful to take, land or possess animals living intertidally on the bottom for commercial purposes without first obtaining a Commercial Shellfish And Intertidal Animal Permit issued by the Department pursuant to OAR 635-005-0245.

(2) The Commercial Shellfish And Intertidal Animal Permit is in addition to, and not in lieu of a commercial fishing license, bait fishing license or boat license required by ORS 508.235, 508.312 and 508.260.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.116
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0685

Permit Fee

(1) The annual fee for the Commercial Shellfish And Intertidal Animal Permit is \$40.00 (plus a \$2.00 license agent fee) for applicants.

(2) The Commercial Shellfish And Intertidal Animal Permit is only available at the Astoria, Newport and Charleston Department field offices.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.116
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

635-004-0690

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fisher who holds a valid Commercial Shellfish And Intertidal Animal Permit.

(2) Each permit holder is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12

Rule Caption: Oregon Commercial Fishing Regulations, Division 635-005 Restructure and Reorganization.

Adm. Order No.: DFW 76-2012

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Rules Adopted: 635-005-0225, 635-005-0230, 635-005-0235, 635-005-0245, 635-005-0250, 635-005-0255, 635-005-0260, 635-005-0265, 635-005-0270, 635-005-0275, 635-005-0280, 635-005-0305, 635-005-0310, 635-005-0315, 635-005-0320, 635-005-0325, 635-005-0330, 635-005-0335, 635-005-0340, 635-005-0345, 635-005-0360, 635-005-0365, 635-005-0370, 635-005-0375, 635-005-0380, 635-005-0385, 635-005-0390, 635-005-0395, 635-005-0400, 635-005-0405, 635-005-0410, 635-005-0415, 635-005-0420, 635-005-0425, 635-005-0430, 635-005-0435, 635-005-0440, 635-005-0445, 635-005-0450, 635-005-0480, 635-005-0485, 635-005-0490, 635-005-0500, 635-005-0510, 635-005-0515, 635-005-0520, 635-005-0525, 635-005-0565, 635-005-0570, 635-005-0575, 635-005-0580, 635-005-0585, 635-005-0590, 635-005-0595, 635-005-0600, 635-005-0605, 635-005-0610, 635-005-0615, 635-005-0620, 635-005-0650, 635-005-0675, 635-005-0680, 635-005-0685, 635-005-0690, 635-005-0695, 635-005-0700, 635-005-0705, 635-005-0710, 635-005-0715, 635-005-0720, 635-005-0725, 635-005-0730, 635-005-0735, 635-005-0740, 635-005-0745, 635-005-0750, 635-005-0755, 635-005-0760, 635-005-0765, 635-005-0770, 635-005-0775, 635-005-0790, 635-005-0795, 635-005-0800, 635-005-0805, 635-005-0810, 635-005-0815, 635-005-0820, 635-005-0825, 635-005-0830, 635-005-0835, 635-005-0845, 635-005-0850, 635-005-0855, 635-005-0890, 635-005-0895, 635-005-0915, 635-005-0920, 635-005-0925, 635-005-0930, 635-005-0935, 635-005-0940

Rules Repealed: 635-005-0002, 635-005-0015, 635-005-0016, 635-005-0031, 635-005-0035, 635-005-0048, 635-005-0090, 635-005-0095, 635-005-0100, 635-005-0115, 635-005-0120, 635-005-0130, 635-005-0135

Rules Renumbered: 635-005-0040 to 635-005-0455, 635-005-0070 to 635-005-0860, 635-005-0080 to 635-005-0870, 635-005-0082 to 635-005-0875, 635-005-0150 to 635-005-0910, 635-005-0160 to 635-005-0300, 635-005-0186 to 635-005-0635, 635-005-0200 to 635-005-0645

Rules Ren. & Amend: 635-005-0001 to 635-005-0240, 635-005-0003 to 635-005-0285, 635-005-0005 to 635-005-0295, 635-005-0020 to 635-005-0290, 635-005-0030 to 635-005-0350, 635-005-0032 to 635-005-0355, 635-005-0042 to 635-005-0460, 635-005-0045 to 635-005-0465, 635-005-0047 to 635-005-0470, 635-005-0049 to 635-005-0505, 635-005-0055 to 635-005-0475, 635-005-0060 to 635-005-0495, 635-005-0063 to 635-005-0530, 635-005-0064 to 635-005-0535, 635-005-0065 to 635-005-0540, 635-005-0066 to 635-005-0545, 635-005-0067 to 635-005-0550, 635-005-0068 to 635-005-0555, 635-005-0069 to 635-005-0560, 635-005-0075 to 635-005-0865, 635-005-0084 to 635-005-0880, 635-005-0085 to 635-005-0885, 635-005-0140 to 635-005-0900, 635-005-0145 to 635-005-0905, 635-005-0185 to 635-005-0625, 635-005-0190 to 635-005-0630, 635-005-0195 to 635-005-0640, 635-005-0205 to 635-005-0655, 635-005-0210 to 635-005-0660, 635-005-0215 to 635-005-0665, 635-005-0220 to 635-005-0670, 635-005-0170 to 635-005-0780, 635-005-0175 to 635-005-0785, 635-005-0180 to 635-005-0840

Subject: This is part 2 (of 3) of an effort to restructure and reorganization Oregon's regulations governing commercial fisheries, comprising of new rules and amendments to and renumbering of existing rules. Modifications increase the clarity, consistency, and ease of use without changing the intent or practical effect of the regulations. Housekeeping and technical corrections to the regulations were performed to ensure consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0225

Organization

(1) This Division is organized into the following major shellfish and invertebrate fishery sections:

(a) Clam and Intertidal Section, including the following fisheries:

(A) Marine Snail and Abalone Fishery;

(B) Piddock Fishery;

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- (C) Bay Clam Dive Fishery; and
- (D) Intertidal Animal, Mussel and Clam Commercial Fisheries.
- (b) Crab Section, including the following fisheries:
 - (A) Ocean Dungeness Crab Fishery;
 - (B) Bay and Estuary Dungeness Crab Fishery; and
 - (C) Red Rock, Box, Tanner and other Crab Fisheries.
- (c) Shrimp Section, including the following fisheries:
 - (A) Pink Shrimp Fishery;
 - (B) Spot and Coonstripe Shrimp Fisheries; and
 - (C) Brine Shrimp Fishery.
- (d) Other Shellfish and Marine Invertebrates Section, including the

following fisheries:

- (A) Weathervane Scallop Fishery;
- (B) Sea Urchin Fishery;
- (C) Crayfish Fishery;
- (D) Oyster Fishery;
- (E) Squid Fishery; and
- (F) Octopus Fishery.

(2) Administrative rules OAR 635-005-0230 through 635-004-0275 are general regulations, in addition to and not in lieu of regulations contained within the fishery sections listed in section (1) of this rule.

(3) Finfish fishery regulations are located in OAR chapter 635, division 004.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0230

Licensing Requirements

In addition to the regulations contained in this Division, fishers should consult regulations contained in OAR chapter 635, division 006 and Oregon Revised Statutes Chapter 508 for licensing requirements and fee information.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.235, 508.260, 508.300, 508.306 & 508.312
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0235

Authority of Enforcement in Fishery Conservation Zone and Exclusive Economic Zone

(1) Pursuant to ORS 506.750 through 506.755, regulations including but not limited to inspection of catch, methods fishing, gear restrictions, seasons, closures and restricted areas are applicable in the Fishery Conservation Zone (0-50 miles offshore of Oregon), and federal commercial fishing regulations are applicable in the Exclusive Economic Zone (3-200 miles offshore of the United States).

(2) For the purposes of this rule, "Fishery Conservation Zone" means the zone between the mean high water mark of tidally influenced bodies of water of the state of Oregon to 50 nautical miles offshore of Oregon.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 506.755
Stats. Implemented: ORS 506.109, 506.129, 506.501, 506.511, 506.521, 506.750 & 506.755
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0240

Definitions

As used in Division 005 regulations:

(1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.

(2) "Bait" means food fish not harvested for human consumption.

(3) "Board" means the Commercial Fishery Permit Board.

(4) "Buy" includes offer to buy, barter, exchange or trade.

(5) "Catastrophic loss" means direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports.

(6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.

(7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of dispos-

ing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(9) "Crab pot" means any portable, enclosed device used to take crab with one or more gates or entrances that allows crab restricted entry and exit, and has a line attached to surface floats.

(10) "Crab ring" means any fishing device used to take crab that allows crab unrestricted entry or exit while fishing, and has a line attached to surface floats.

(11) "Department" means the State Department of Fish and Wildlife.

(12) "Derelict Dungeness crab gear" means Dungeness crab gear which was lost, forgotten, damaged, abandoned or otherwise deserted.

(13) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(14) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.

(15) "Dungeness crab gear" means crab pots, crab rings or a combination thereof used for taking Dungeness crab.

(16) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.

(17) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, set net, and stationary hook-and-line gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;

(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) "Purse seine" means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) "Seine" means any non-fixed net other than a trawl or gillnet and includes all types of purse seines;

(j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;

(m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;

(o) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and

(p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(18) "Fishing trip" means a dock-to-dock transit during which fishing for commercial purposes occurs, and is followed by a landing.

(19) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction pursuant to ORS 506.036.

(20) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 (See OAR 635-004-0240).

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(21) "Intertidal" means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.

(22) "Land, Landed or Landing" means either of the following:

(a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish on board the vessel are counted as part of that landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation; and

(b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(23) "Length" or "Overall Length" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform.

(24) "Ocean Dungeness Crab fishing season" means the period normally from December 1 of one year through August 14 of the next year and is specific to the ocean Dungeness crab fishery. In periods where a season delay occurs, "ocean Dungeness crab fishing season" means from the date the fishery opens to the following August 14.

(25) "Oyster" includes oysters, oyster seed, oyster cultch, and oyster shell.

(26) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(27) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.

(28) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(29) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting. Cooking crab is not considered processing.

(30) "Replacement vessel" is a vessel purchased to replace a Limited Entry permitted vessel which has been lost due to fire, capsizing, sinking or other event.

(31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.

(32) "Salmon" means all anadromous species of salmon, including but not limited to:

(a) *Oncorhynchus gorbuscha*, commonly known as humpback, humpies or pink salmon.

(b) *Oncorhynchus keta*, commonly known as chum or dog salmon.

(c) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.

(d) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.

(e) *Oncorhynchus tshawytscha*, commonly known as Chinook salmon.

(33) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(34) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(35) "Shellfish Sanitation Certificate" means a license required by Oregon Department of Agriculture to engage in business of harvesting, distributing or processing of oysters, clams, mussels and scallops for human consumption.

(36) "Special Regulation Marine Areas" means specific areas described in OAR 635-039-0090 and the "Oregon Sport Fishing Regulations," which includes all Marine Gardens, Subtidal Research Reserves, Intertidal Research Reserves, Habitat Refuges, and other areas closed to designated activities.

(37) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(38) "Transport" means transport by any means, and includes offer or receive for transportation.

(39) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

(A) Period 1: January through February;

(B) Period 2: March through April;

(C) Period 3: May through June;

(D) Period 4: July through August;

(E) Period 5: September through October; and

(F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of shellfish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time;

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 7 consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(40) "Undue hardship" means death, serious illness requiring extended care by a physician, permanent disability, or other circumstances beyond the individual's control.

(41) "Unlawful to buy" means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.

(42) "Vessel" means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes.

(43) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(44) "Vessel owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.

(45) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 137-1991(Temp), f. 12-20-91, cert. ef. 12-23-91; FWC 39-1992(Temp), f. & cert. ef. 6-19-92; DFW 61-2002, f. & cert. ef. 6-14-02; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-005-0001, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0245

Commercial Shellfish And Intertidal Animal Harvest Permit Required

(1) It is unlawful to take, land or possess animals living intertidally on the bottom for commercial purposes without first obtaining a Commercial Shellfish And Intertidal Animal Harvest Permit issued by the Department

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pursuant to ORS 508.116. Permit holders are required to comply with the conditions contained on their permit.

(2) A Commercial Shellfish And Intertidal Animal Harvest Permit is in addition to, and not in lieu of a commercial fishing license, bait fishing license or boat license required by ORS 508.235, 508.312 and 508.260.

(3) A Commercial Shellfish And Intertidal Animal Harvest Permit is not required to take, land or possess shellfish legally taken in a fishery already requiring a separate permit, or the Bay and Estuary Dungeness crab fishery.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.116
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0250

Permit Fee

(1) The annual fee for a Commercial Shellfish And Intertidal Animal Harvest Permit is \$40.00 (plus a \$2.00 license agent fee) for applicants.

(2) Commercial Shellfish And Intertidal Animal Harvest Permits are only available at the Astoria, Newport and Charleston Department field offices.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.116
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0255

Additional License Requirement

Each harvester, distributor or processor of oysters, clams, mussels and scallops intended for human consumption must obtain a Shellfish Sanitation Certificate from the Oregon Department of Agriculture pursuant to ORS 622.080.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 622.080
Stats. Implemented: ORS 506.109, 506.129 & 622.080
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0260

Closed Seasons and Areas

(1) It is *unlawful* to take for commercial purposes, the following from Special Regulation Marine Areas described in the "Oregon Sport Fishing Regulations:"

(a) Shellfish and invertebrates in designated Marine Garden areas;
(b) Shellfish and invertebrates in designated Intertidal and Subtidal Research Reserves;

(c) Fish, shellfish and invertebrates in designated Habitat Refuges; or
(d) Fish, shellfish and invertebrates from 1000 feet around and including Pyramid Rock from May 1 through August 31.

(2) It is unlawful to move any vessel within 500 feet of the main rocks in Three Arch Rocks National Wildlife Refuge from May 1 through September 15.

(3) The following areas have additional closures and prohibitions as specified in ORS Chapter 511, and fishers should consult these regulations before fishing in these areas:

- (a) Coastal Streams Areas;
- (b) Columbia River Area;
- (c) Rogue River Area;
- (d) Curry County Area;
- (e) Coos, Douglass and Lane County Areas;
- (f) Nestucca, Netarts and Tillamook Bay Areas; and
- (g) Willamette River Area.

(4) Marine Reserves and Marine Protected Areas within Oregon's Territorial Sea have been established and fishers should consult regulations in OAR Division 012 regarding fishing and transit restrictions.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0265

Bait Restrictions

It is *unlawful* to use lamprey as bait in any commercial fishery.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.036, 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0270

Same Trip Recreational and Commercial Fishing – When Unlawful

(1) It is unlawful for a vessel licensed pursuant to ORS 508.260 to be used to fish recreationally and commercially on the same fishing trip.

(2) Recreational fishing gear is legal to use in commercial fisheries provided it complies with the provisions specified in OAR 635-005-0275.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0275

Fishing Gear

(1) This regulation lists a complete set of legal gear types and associated general restrictions to take shellfish and marine invertebrates in the fisheries specified in this Division. However, most individual fisheries listed in this Division are restrained additionally by supplemental regulations specific to those fisheries. Fishers should consult the specific section of the fishery they are interested in for additional regulations.

(2) It is unlawful to possess, deploy, haul, or carry on board a fishing vessel any fishing gear not listed in section (3) of this rule, or fishing gear not in compliance with the restrictions listed in section (4) of this rule, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(3) It is unlawful to take shellfish and invertebrates for commercial purposes by any means except:

- (a) Hook-and-line gear, including, but not limited to handline, pole-and-line, reel-and-line and pole-reel-and-line;
- (b) Longlines and vertical hook and lines are permitted in the ocean;
- (c) Pots or traps (including pot longline gear) are permitted in the ocean;
- (d) Rings;
- (e) Dipnets of hoop or A-frame design;
- (f) Seines are permitted in the ocean;
- (g) Trawl gear is permitted in the ocean;
- (A) Trawl gear shall not be used with any other gear type on a single fishing trip.

(h) Set nets are allowed with an experimental gear permit pursuant to OAR 635-006-0020;

- (i) Spear is permitted in the ocean;
- (j) Dive gear; or
- (k) By hand or hand powered methods including shovel, rake, and abalone iron.

(4) Longline, vertical hook-and-line and pot gear other than Dungeness crab gear and crayfish pots or ring nets which is fixed or anchored to the bottom or drifting unattached to the vessel have the following restrictions:

- (a) Gear shall not be left unattended for more than seven days;
- (b) Pot longline gear shall be marked at the surface and at each terminal end with a pole, flag, light, radar reflector, and a buoy showing clear identification of the owner or operator;

(c) Pot gear used for other than Dungeness crab, hagfish and spot or coonstripe shrimp shall have biodegradable escape panels constructed with #21 or smaller, untreated cotton twine in such manner that an opening at least eight inches in diameter will result when the twine deteriorates.

(5) A buoy used to mark gear under subsection (3)(b) of this rule must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

- (a) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or
- (b) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0280

Organization of Rules

Administrative rules contained in OAR 635-005-0285 and 635-005-0290 shall apply to all fisheries in the Clam and Intertidal section, and are in addition to and not in lieu of Division 005 General Regulations contained in OAR 635-005-0225 through 635-005-0275. The Clam and Intertidal Section includes regulations for the Marine Snail and Abalone, Pidcock, Bay Clam Dive and Intertidal Animal, Mussel and Clam Commercial Fisheries.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0285

Additional License Requirement

It is unlawful to take, distribute or process oysters, clams, mussels and scallops intended for human consumption without first obtaining a Shellfish Sanitation Certificate specified in OAR 635-005-0255.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
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; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-005-0003, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0290

Closed Seasons and Areas

It is unlawful to take for commercial purposes:

(1) Gaper clams from January 1 through June 30, except under a limited entry Bay Clam Dive Permit (OAR 635-005-0310) an incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch.

(2) Razor clams from July 15 through September 30 in the area north of Tillamook Head in Clatsop County.

(3) Any clams from:

(a) Little Nestucca Bay;

(b) Big Nestucca Bay;

(c) Netarts Bay, except cockles may be taken;

(d) Salmon River and Bay;

(e) Siletz River and Bay; or

(f) All state parks south of Tillamook Head.

(4) Bay clams in Tillamook Bay from the following areas:

(a) The "Ghost Hole" from the floating toilet site south to Sandstone Point and 500 feet westward from the Highway 101 shoreline;

(b) The area east of a line connecting the Coast Guard tower on the north jetty and buoy marker 13; or

(c) The area above mean lower low water near Kincheloe Point.

(5) Subtidal cockle clams in Netarts Bay from the following areas:

(a) An area extending 500 feet to the north adjacent to the Shellfish Preserve and across the entire width of the bay; or

(b) The area above mean lower low water.

(6) Subtidal bay clams in Coos Bay from the following areas:

(a) In depths shallower than 10 feet from mean lower low water; or

(b) The area of South Slough south of the Charleston bridge.

(7) Any clams from the Shellfish Preserve in Yaquina Bay, Lincoln County, which is the tideflat on the north side of the wood piling breakwater, south of the troller's basin. The legal description is as follows: Beginning at a point 1,181.24 feet south and 430.55 feet east of the meander corner of Sections 8 and 9, T11S, R11W, W.M., said point being a flashing red beacon on the southeastern end of the U.S. Army Engineers wood piling breakwater, thence northwesterly along said breakwater to a point being a flashing white beacon on the northwestern end of said breakwater located 583.46 feet south and 2,082.62 feet west of the above meander corner, thence southeasterly along the extreme low water line of the sand pit lying on the north side of the said breakwater to the point of beginning, said tideland being 7.2 acres, more or less, at mean low water line;

(8) Any clams from the Shellfish Preserve in Netarts Bay beginning from the quarter corner of Section 17, 20, T2S, R10W, thence north 10 degrees 14 feet west 200 feet to point of beginning, thence west approximately 6,250 feet to the west meander line of Netarts Bay, thence north 1,000 feet, thence east about 6,250 feet, thence south along the meander line to the point of beginning, except any privately owned tidelands within the described area are excluded from the closure.

(9) Any shellfish from Special Regulation Marine Areas as described in OAR 635-005-0260.

(10) Clams or mussels from a health closure area closed for biotoxins. "Health closure area" means an area closed to the public due to health risks of consuming shellfish from the area, and "Biotoxin" means naturally occurring shellfish toxins monitored by the Oregon Department of Agriculture.

(11) Any shellfish taken for human consumption from an area designated as restricted by the Oregon Department of Agriculture. Fishers should call the Oregon Department of Agriculture Shellfish Safety Hotline at 1-800-448-2474, the Oregon Department of Agriculture Food Safety Division at 1-503-986-4720 or visit the Oregon Department of Agriculture website at www.oregon.gov/ODA to confirm the area of intended harvest is open before harvesting shellfish.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0065, 1975; Renumbered from 635-036-0090, 1979; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 137-1991(Temp), f. 12-20-91, cert. ef. 12-23-91; FWC 39-1992(Temp), f. & cert. ef. 6-19-92; FWC 94-1992(Temp), f. 9-18-92, cert. ef. 9-19-92; FWC 102-1992(Temp), f. 10-1-92, cert. ef. 10-2-92; FWC 121-1992(Temp), f. & cert. ef. 11-9-92; DFW 30-1998(Temp), f. & cert. ef. 5-6-98 thru 10-23-98; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 61-2002, f. & cert. ef. 6-14-02;

DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 133-2008(Temp), f. 10-17-08, cert. ef. 10-18-08 thru 12-31-08; Administrative correction 1-23-09; DFW 135-2010(Temp), f. 9-23-10, cert. ef. 9-27-10 thru 12-31-10; DFW 141-2010(Temp), f. 10-6-10, cert. ef. 10-7-10 thru 12-31-10; DFW 79-2011(Temp), f. 6-29-11, cert. ef. 7-3-11 thru 12-29-11; Renumbered from 635-005-0020, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0295

Marine Snail Fishery Prohibited

(1) It is unlawful to take any marine snail species of the class gastropoda, including all abalone species, 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.

(2) Application for such a permit shall be in writing and shall include the following:

(a) A description of the commercial aquaculture facility;

(b) The methods for collecting and returning broodstock abalone to and from the wild;

(c) The methods for checking abalone and imported kelp food for pathogens or exotic fauna;

(d) The procedures for isolating and culturing abalone to prevent contamination of wild abalone stock; and

(e) Any other information as the Department may require.

(3) 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 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129 & 506.306

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; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-005-0005, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0300

Prohibited

It is unlawful to take piddocks for commercial purposes.

Stat. Auth.: ORS 506.109, 506.129 & 506.306

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0465, Renumbered from 635-036-0255; Renumbered from 635-005-0160, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0305

Fishery Defined

"Bay clam dive fishery" means the commercial fishery for bay clams (including: cockle clams, Clinocardium nuttallii; butter clams, Saxidomus gigantea; gaper clams, Tresus capax; native littleneck clams, Protothaca staminea; and softshell clams, Mya arenaria) from subtidal areas in Oregon estuaries using dive gear.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0310

Requirement for Bay Clam Dive Permit

(1) It is unlawful in the bay clam dive fishery to:

(a) Take, land or possess bay clams for commercial purposes, using dive gear, from subtidal areas in any Oregon estuary north of Heceta Head without first obtaining a coast-wide Bay Clam Dive Permit issued pursuant to OAR 635-005-0315 through 635-005-0340;

(b) Take, land or possess bay clams for commercial purposes, using dive gear, from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining either a coast-wide Bay Clam Dive Permit or a south-coast Bay Clam Dive Permit issued pursuant to OAR 635-005-0315 through 635-005-0340;

(c) For a wholesaler dealer, canner or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by subsections (1)(a) or (1)(b) of this rule.

(d) To take bay clams where more than two divers operating from any one vessel were in the water at the same time or where more than two persons without Bay Clam Dive Permits, excluding persons authorized by the Department for the performance of official duties, were on board any vessel while harvesting, possessing, or transporting bay clams.

(e) To take clams except under the terms and conditions specified in the permit. Permits may be issued to mechanically harvest clams in subtidal areas by means of water jet or other hand or handpowered tool. Application for such a permit must be written and include a description of the specific areas where mechanical taking is proposed and such other information as the Director shall require.

ADMINISTRATIVE RULES

(A) Applications should be mailed to: Marine Resources Program Office, Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR 97365.

(2) The Department shall not issue more than ten coast-wide permits required by subsection (1)(a) of this rule and five south-coast permits required by subsection (1)(b) of this rule.

(3) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation shall not change during the year.

(4) The Bay Clam Dive Permit required by section (1) of this rule is in addition to and not in lieu of either:

(a) The commercial fishing license required by ORS 508.235; or

(b) The commercial bait fishing license required by ORS 508.312.

(5) No vessel may hold more than one Oregon Bay Clam Dive Permit at any one time.

(6) If Bay Clam Dive Permits are issued on an individual basis, no individual may hold more than one Oregon Bay Clam Dive Permit at any one time.

(7) Unless otherwise provided, Bay Clam Dive Permits must be purchased by January 31 of the year the permit is sought for renewal.

(8) No Bay Clam Dive Permit shall be transferred without the vessel lien holder's written permission.

(9) Applications for Bay Clam Dive Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0315

Permit Fee

(1) The annual fee for a Bay Clam Dive Permit is \$100.00 (plus a \$2.00 license agent fee) for applicants.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0340.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0320

Eligibility Requirements for a Permit

(1) An individual licensed as a commercial harvester under ORS 508.235 or 508.312 or a commercially licensed vessel under ORS 508.260 is eligible to obtain a Bay Clam Dive Permit required by OAR 635-005-0310:

(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 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;

(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 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 635-005-0330; or

(d) Through the lottery if a lottery is held in accordance with OAR-005-0335.

(2) In making determinations regarding issuance or renewal of any limited entry permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0325

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Bay Clam Dive Permit established pursuant to OAR 635-005-0310, 635-005-0330 and 635-005-0340 is denied may make written request to the Board for review of the denial. The review provided in this section is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(2) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permit if the Board finds strict adherence to the requirements were not met as a result of undue hardship as defined in OAR 635-005-0240.

(3) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(4) The Board may delegate to the Department its authority to waive requirements for renewal of Bay Clam Dive Permits in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(5) The bay clam dive fishery requires a \$125.00 non-refundable application fee for Board review. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0330

Renewal of Permit

(1) Bay Clam Dive Permits may be renewed the following year:

(a) By submitting to the Department a \$100.00 fee (plus a \$2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought;

(b) The permittee shall have 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 the prior calendar year;

(c) If all logbooks required under OAR 635-005-0345 were submitted by the application deadline for renewal of a Bay Clam Dive Permit; and

(d) If a Bay Clam Dive Permit is transferred under OAR 635-005-0340(2), annual landing requirements for permit renewal in subsection (1)(b) of this rule are waived in the year the transfer occurred.

(2) An application for renewal of a Bay Clam Dive Permit shall be considered complete if it is legible, has all information requested in 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 January 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0335

Lottery for Limited Entry Bay Clam Dive Permits

(1) If the number of Bay Clam Dive Permits issued in accordance with OAR 635-005-0310 falls below ten for coast-wide permits or five for south-coast permits, the Department may issue Bay Clam Dive Permits by a lottery system. However, as a result of any such lottery, the total number of Bay Clam Dive Permits issued shall not exceed ten for coast-wide permits or five for south-coast permits;

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) 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.

(4) Only one application per vessel or individual may be submitted for each permit fishery lottery.

(5) Any application which is not legible, has incomplete information, or is postmarked after the deadline shall not be entered in the lottery. Applications for all permits shall be accepted at the Salem headquarters office of the Department, and shall be postmarked or date stamped no later than March 31 of the year for which the permit is issued.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-005-0340

Transferability of Permits

(1) Any transfer of a Bay Clam Dive Permit without the written consent of each person holding a security interest in such vessel is void.

(2) Permits may be transferred as follows:

(a) The permittee may request the Department to transfer, to a replacement vessel that is owned by the same person that owns the vessel to which the Bay Clam Dive Permit was originally issued, a Bay Clam Dive Permit up to two times per calendar year;

(b) In the event of the death of a Bay Clam Dive Permit holder, the permit of the deceased may be issued to an immediate family member upon request, validated by the Department's receipt of a copy of the death certificate and the original permit. "Immediate family member" means a Bay Clam Dive Permit holder's spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren; or

(c) The Department may authorize transfer of a Bay Clam Dive Permit for up to 90 days upon petition by the permittee on the form provided by the Department due to a medical condition.

(A) The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder, and such other evidence the Department considers reliable.

(B) At the end of the transfer period, the Department may reinstate the Bay Clam Dive Permit to the original permit holder or to a new transferee, provided that the original permit holder again submits medical evidence documenting that the injury or illness continues to prevent their return to diving.

(C) There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit and ending two years from that date.

(D) If the Department, after review of a denial by the Board, allows a transfer, the original Bay Clam Dive Permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (1)(c) of this rule, request the Department reinstate the permit back to their possession. Such transfer requires 30 days written notice to the Department. In any event, upon expiration of the transfer period specified in subsection (1)(c) of this rule, or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (1)(c) of this rule.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0345

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fisher or commercial fishing vessel which holds a valid Bay Clam Dive Fishery Permit.

(2) Each permit holder is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, each permit holder shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, each permit holder shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0350

Size Limit

(1) The minimum legal size of cockle clams taken for commercial purposes under a Bay Clam Dive Permit (OAR 635-005-0310) is 2-1/4 inches at the greatest dimension. It is unlawful to possess any cockle clams taken for commercial purposes under a Bay Clam Dive Permit which are less than the minimum legal size.

(2) The minimum legal size of gaper clams taken for commercial purposes under a Bay Clam Dive Permit (OAR 635-005-0310) is 4 inches at the greatest dimension. It is unlawful to possess any gaper clams taken for commercial purposes under a Bay Clam Dive Permit which are less than the minimum legal size.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 255, f. 9-12-72, ef. 10-1-72; Renumbered from 625-010-0075, 1975; Renumbered from 635-036-0100, 1979; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 10-2007, f. & cert. ef. 2-14-07; Renumbered from 635-005-0030, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0355

Catch Limits

(1) In Netarts Bay, the commercial landing cap for cockle clams harvested by the bay clam dive fishery is 8,000 pounds.

(2) In Tillamook Bay, the commercial landing cap for cockle clams harvested by the bay clam dive fishery is 90,000 pounds.

(3) When the commercial cockle clam landing caps specified in sections (1) and (2) of this rule are reached, the commercial cockle clam fishery in that estuary will close for the remainder of that calendar year.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; Renumbered from 635-005-0032, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0360

Subtidal Clams for Bait

Clams harvested or at any time intended for sale as bait in the bay clam dive fishery are subject to the requirements of OAR 635-005-0390.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0365

Fisheries Defined

"Intertidal Animal, Mussel, and Clam Fisheries" means the commercial fisheries for any animal living intertidally on the bottom.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0370

Permit Required

It is unlawful to take, land or possess animals living intertidally on the bottom for commercial purposes without first obtaining a Commercial Shellfish And Intertidal Animal Harvest Permit issued by the Department pursuant to OAR 635-005-0245 and 635-005-0250.

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

Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.116

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0375

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fisher who holds a valid Commercial Shellfish And Intertidal Animal Harvest Permit.

(2) Each permit holder is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, each permit holder shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, each permit holder shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0380

Fishing Gear

It is unlawful in intertidal commercial fisheries to:

(1) Take mussels for commercial purposes by any means other than hand or a hand-powered tool.

(2) Take razor clams for commercial purposes by any means other than by hand or by shovel.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0385

Size Limit

(1) There is no size limit for mussels taken for commercial purposes.

(2) The minimum legal size of razor clams taken for commercial purposes is 3-3/4 inches from tip to tip of the shell. It is unlawful to possess

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any razor clams taken for commercial purposes which are less than the minimum legal size.

(a) All undersized razor clams must be immediately returned to the hole from which they were dug with the hinge oriented towards the ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0390

Clams and Mussels for Bait

(1) Clams and mussels taken as bait must be visibly dyed with a Department approved dye.

(2) Dyeing must occur before leaving the harvest area, before being transported by vehicle, or before the time of docking of the vessel used in harvesting.

(3) Clams and mussels taken for bait may not be possessed aboard a vessel while clams and mussels for human consumption are on board. Upon leaving the vessel or the harvest area, clams and mussels taken as bait may not be mixed with clams and mussels taken for human consumption.

(4) Prior to sale, clams or mussels taken from restricted areas and live boxed must be stored in a restricted area pending sale. "Restricted area" means an area closed or prohibited to commercial harvest of shellfish by the Oregon Department of Agriculture for the harvest of clams, mussels or other shellfish for human consumption by commercial shellfish harvesters, and "live boxed" means any type of container used to hold or store shellfish in the water.

(5) Clams or mussels taken for human consumption and later sold as bait must be dyed at the time of sale to a wholesale fish dealer or wholesale fish bait dealer.

(6) Clams and mussels harvested for bait must be sold to a wholesale fish dealer or wholesale fish bait dealer within 48 hours of end of harvest.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0395

Organization of Rules

The Crab Section includes regulations for the ocean Dungeness, Bay and Estuary Dungeness and Red Rock, Box, Tanner and Other Crab Fisheries.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0400

Fishery Defined

"Ocean Dungeness crab fishery" means all fishing for Dungeness crab (Cancer magister) in the Pacific Ocean and Columbia River for commercial purposes.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0405

Requirement for Ocean Dungeness Crab Permit

(1) It is unlawful to take, land or possess Dungeness crab from the ocean Dungeness crab fishery without first obtaining an Ocean Dungeness Crab Permit issued pursuant to ORS 508.931 or 508.941. An Ocean Dungeness Crab Permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(2) It is unlawful for a wholesaler, canner, or buyer to buy or receive Dungeness crab taken in the ocean Dungeness crab fishery from a vessel for which the permit required by this rule has not been issued.

(3) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean Dungeness crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.

(4) A Single Delivery License shall not be substituted for an Ocean Dungeness Crab Permit. Once a vessel has obtained an Ocean Dungeness Crab Permit, Dungeness crab may be landed by the vessel using a combination of an Ocean Dungeness Crab Permit and a Single Delivery License in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one ocean Dungeness crab fishing season using Single Delivery Licenses.

(5) Effective December 1, 2006, the amount of Dungeness crab gear allocated to a permit required under section (1) above will be determined as follows:

(a) The allocation will be based on documented landings of ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;

(b) The Dungeness crab gear allocation will be the highest number of pots and rings in aggregate the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);

(c) A Dungeness crab gear allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;

(d) A Dungeness crab gear allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(e) A Dungeness crab gear allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

(6) The Ocean Dungeness Crab Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and ORS 508.260.

(7) No vessel may hold more than one Ocean Dungeness Crab Permit at any one time.

(8) Unless otherwise provided, Ocean Dungeness Crab Permits must be purchased by December 31 of the year the permit is sought for renewal.

(9) Applications for Ocean Dungeness Crab Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306, 508.926 & 508.931
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0410

Permit Fee

(1) The annual fee for an Ocean Dungeness Crab Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.941.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0440. See ORS 508.936.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.931
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0415

Eligibility Requirements for a Permit

(1) Vessels or vessel owners must meet eligibility requirements for an Ocean Dungeness Crab Permit pursuant to ORS 508.931.

(2) An individual licensed under ORS 508.235 or a commercial licensed vessel under ORS 509.260, except as otherwise stated in section 3 of this rule, is eligible to obtain an Ocean Dungeness Crab Permit required by OAR 635-005-0405 by renewal of the previous year's permit as specified in OAR 635-005-0430. For the purposes of eligibility for an Ocean Dungeness Crab Permit, a vessel which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year.

(3) ORS 508.931 and ORS 508.941 require that the vessel be previously licensed in accordance with ORS 508.260 for the purposes of initial eligibility for an Ocean Dungeness Crab Permit. "Initial eligibility for vessels to participate" for the purposes of application for an Ocean Dungeness Crab Permit pursuant to ORS 508.931, means eligibility of a vessel on which to make permit application is confined to vessels which have never obtained an initial permit. A Single Delivery License shall not be substituted for a boat license for this purpose.

(4) In making determinations regarding issuance or renewal of any limited entry permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other busi-

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ness records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.931
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0420

Revocation and Refusal to Issue Permits

The Commission may revoke and refuse subsequent issuance of an Ocean Dungeness Crab Permit pursuant to ORS 508.485 and 508.490.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0425

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of an Ocean Dungeness Crab Permit established pursuant to OAR 635-005-0405, 635-005-0430 and 635-005-0440 is denied, may make written request to the Board for review of the denial. The procedure for requesting review and the applicable standard of review of denial of an Ocean Dungeness Crab Permit shall be pursuant to ORS 508.941.

(2) For the ocean Dungeness crab fishery, a permit holder may request review of the Department's initial Dungeness crab gear allocation, the Department's denial of replacement of lost buoy tags, or denial of permit renewal by doing so in writing to the Commercial Fishery Permit Board. The Board may:

(a) Adjust the amount of Dungeness crab gear allocated to a permit:

(A) Based on additional landings documentation supplied by permit holder according to criteria under OAR 635-005-0405(5); or

(B) Based on circumstances during the qualifying seasons described in OAR 635-005-0405(5), a Dungeness crab gear allocation may be increased by one tier as described under 635-005-0405(5) as a result of undue hardship as defined in OAR 635-005-0240.

(b) Approve replacement of lost buoy tags due to a catastrophic loss as defined in OAR 635-005-0240.

(c) Waive the permit renewal date requirement if the Board finds that strict adherence to this requirement was not met as a result of undue hardship as defined in OAR 635-005-0240.

(3) The Board may delegate to the Department its authority to waive requirements for renewal of Ocean Dungeness Crab Permits in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(4) The ocean Dungeness crab fishery requires a \$125.00 non-refundable application fee for Board review. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

(5) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.941
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0430

Renewal of Permit

(1) An individual who obtained a limited entry Ocean Dungeness Crab Permit may renew the permit pursuant to ORS 508.941 by submitting to the Department a \$125.00 fee (plus a \$2.00 license agent fee) for resident applicants and a \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application date-stamped or postmarked by December 31 of the year for which renewal is sought.

(2) An application for renewal of an Ocean Dungeness Crab Permit shall be considered complete if it is legible, has all information requested in 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 December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee 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 may not be grounds for treating the application as having been filed in a timely and complete manner.

(4) A permit which is not renewed by December 31 lapses, and shall not be renewed for subsequent years.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0435

Lottery for Limited Entry Ocean Dungeness Crab Permits

There is no lottery system for the issuance of Ocean Dungeness Crab Permits.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0440

Transferability of Permits

(1) Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void.

(2) Ocean Dungeness Crab Permit holders may transfer a permit:

(a) Pursuant to ORS 508.936; and

(b) Once in an 18-month period, provided the vessel holding the permit has landed at least 500 pounds of ocean Dungeness crab into Oregon in each of two ocean Dungeness crab fishing seasons in the last five ocean Dungeness crab fishing seasons, which includes landings made during any season open at the time of application. However, the Board may waive the landing requirement as well as the 18-month waiting period for transfers, if the Board finds strict adherence to this requirement was not met by the individual seeking to transfer a permit as a result of undue hardship as defined in OAR 635-005-0240. The Board also may delegate to the Department its authority to waive these requirements in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(3) An Ocean Dungeness Crab Permit is transferable:

(a) To another vessel; or

(b) To the purchaser of the vessel when the vessel is sold.

(4) The vessel to which an Ocean Dungeness Crab Permit is transferred, with the exception of vessels covered by section (5):

(a) Shall not be more than 10 feet longer than the vessel which held the permit on January 1, 2006; and

(b) Shall not be more than 99 feet in length.

(5) For the purpose of subsection (3)(a) of this rule, the Commercial Fishery Permit Board may waive the vessel length restriction if it finds that strict adherence to this requirement was not met as a result of undue hardship as defined in OAR 635-005-0240.

(6) Ocean Dungeness Crab Permits obtained as a result of qualifying under subsection (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less.

(7) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the Ocean Dungeness Crab Permit to a replacement vessel.

(8) Ocean Dungeness Crab Permit transfers are suspended during split season openings as pursuant to OAR 635-005-0465(2).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.936
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0445

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel which holds a valid Ocean Dungeness Crab Permit.

(2) The permit holder is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, each permit holder shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, each permit holder shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0450

Vessel Length Modification in Ocean Dungeness Crab Fishery

No vessel holding an Ocean Dungeness Crab Permit may be modified to increase its length by more than 10 feet during any 60-month period. If a permitted vessel is modified, the owner shall promptly notify the Department and the 60-month period shall begin on the date the Department receives notification.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.936
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

635-005-0455

License Limitation

In the event that a license limitation measure is adopted by the Commission, August 14, 1991, shall be used as the eligibility date for participation in the Dungeness crab fishery.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.931
Hist.: FWC 124-1991, f. 10-23-91, cert. ef. 10-25-91; Renumbered from 635-005-0040, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0460

Areas

Oregon Dungeness crab permits are valid only in Oregon state waters and the Pacific Ocean in federal waters south of an east-west line extending westward at 46° 15' 00" North Latitude (Oregon/Washington border) and north of an east-west line at 42° 00' 00" North Latitude (Oregon/California border).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 117-2005, f. 10-7-05, cert. ef. 12-1-05; DFW 129-2006(Temp), f. 12-12-06, cert. ef. 1-1-07 thru 6-29-07; DFW 41-2007, f. & cert. ef. 6-8-07; Renumbered from 635-005-0042, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0465

Closed Season in Pacific Ocean and Columbia River

(1) It is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of Point Arena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised August, 2011) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV — Season Opening Criteria.

(b) Section V — Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI — Procedure for Establishing Fishing Zones.

In the event that crab quality tests do not meet the criteria for opening the season on December 1, the Director shall adopt temporary rules delaying the season in accordance with the Tri-State Protocol.

(3) It is unlawful to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the transfer of a permit from one vessel to another is suspended from the earliest season opening date through thirty days after the latest season opening date, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(5) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-

2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0470

Possession and Landing Limits

(1) It is unlawful, from the second Monday in June through August 14, for any permitted ocean Dungeness crab vessel to take, land or possess more than 1,200 pounds of Dungeness crab per week from the Pacific Ocean and Columbia River. "Week" means the period beginning 12:01 a.m. local time Monday through 12 midnight Sunday.

(2) Commercial fishers must retain copies of fish landing receipts for a minimum of 90 days on board vessels landing Dungeness crab under the cumulative catch limit described in section (1) of this rule. The receipts must be available for inspection by authorized enforcement officials and by employees of the Department. Legal landing receipts are defined in OAR 635-005-0240.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 40-1999, f. & cert. ef. 5-26-99; DFW 117-2005, f. 10-7-05, cert. ef. 12-1-05; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-005-0047, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0475

Dungeness Crab Gear Specifications

It is unlawful for commercial purposes to:

(1) Take crab by any means other than crab pots or crab rings as defined in OAR 635-005-0240.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter, located on the top or side of the crab pot. If escape ports are placed on the side of the crab pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) A single loop of untreated cotton not heavier than 120 thread size between crab pot lid tiedown hooks and the tiedown straps; or

(b) Any modification of the wire mesh on the top or upper half of the side of the crab pot, secured with a single strand of untreated cotton not heavier than 120 thread size, which, when removed, will create a minimum opening of at least 5 inches in diameter and will meet the following:

(A) The minimum opening may have not more than a single wire mesh (described as a "V") that protrudes into the opening provided that mesh extends into the opening a distance of not more than 2.5 inches, as measured from the perimeter of the opening along either edge of the protruding wire mesh, to serve as an anchor for the securing cotton. The panel containing the opening and the wire mesh acting as an anchor for the securing cotton must be constructed of a single wire no greater than 0.050 inches in diameter.

(B) Cotton must not be wrapped multiple times around wire mesh and may use no more than one knot securing the wire mesh at each end.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
[Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08; DFW 59-2008(Temp), f. & cert. ef. 6-11-08 thru 8-28-08; DFW 98-2008(Temp), f. 8-19-08, cert. ef. 8-29-08 thru 10-31-08; Administrative correction 11-18-08; DFW 142-2008, f. &

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cert. ef. 11-21-08; DFW 145-2008(Temp), f. 11-24-08, cert. ef. 12-1-08 thru 5-29-09; DFW 54-2009(Temp), f. 5-19-09, cert. ef. 5-29-09 thru 8-28-09; DFW 101-2009(Temp), f. 8-27-09, cert. ef. 8-29-09 thru 10-31-09; DFW 126-2009, f. & cert. ef. 10-7-09; DFW 114-2010, f. & cert. ef. 8-10-10; DFW 21-2011(Temp), f. 3-14-11, cert. ef. 3-15-11 thru 4-15-11; Administrative correction, 4-25-11; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0055, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0480

Dungeness Crab Buoy Tag and Gear Marking Requirements

It is unlawful for commercial purposes to:

(1) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the gear is individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and the Department buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All Dungeness crab gear fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-005-0405(5);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear;

(f) Buoys attached to Dungeness crab gear must have the buoy tag securely attached to the buoy closest to the gear at the end away from the buoy line; and

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, as defined in ORS 635-005-0240; or

(C) If the Director finds that the loss of buoy tags was:

(i) Due to an extraordinary event;

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (1)(g)(E) of this rule, and a request for replacement tags under sub-subsection (1)(g)(C) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (1)(g)(C) of this rule. The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-005-0425.

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(2) Possess on a vessel, use, control, or operate any Dungeness crab gear which does not have a tag affixed to the individual pot or ring identifying the gear as belonging to that vessel, a surface buoy bearing the Department buoy brand registered to that vessel, and a Department buoy tag issued by the Department to that vessel, as pursuant to ORS 509.415, except:

(a) To set gear as allowed under OAR 635-005-0405; or

(b) Under a waiver granted by the Department to allow one time retrieval of permitted Dungeness crab gear to shore by another crab permitted vessel provided that:

(A) The vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder as defined by undue hardship in OAR 635-005-0240;

(C) A Request must be in writing and a waiver approved and issued prior to retrieval; and

(D) A copy of the waiver must be on board the vessel making the retrieval (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).

(c) Under a waiver granted by the Department to allow one time change of buoy tags associated with a Dungeness crab permit transfer under OAR 635-005-0440 provided that:

(A) A request must be in writing and a waiver approved and issued prior to change of buoy tags; and

(B) A copy of the waiver must be on board the vessel making the change of buoy tags (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).

(d) When retrieving derelict Dungeness crab gear as pursuant to OAR 635-005-0490;

(e) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing Dungeness crab gear not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized and en route to participate in the Dungeness crab fishery of an adjacent state; or

(f) When operating crab rings in bays or estuaries, only a tag affixed to the individual ring is required.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0485

Dungeness Crab Gear Prohibitions

It is unlawful for commercial purposes to:

(1) Place, operate, or leave Dungeness crab gear in the Pacific Ocean, Columbia River or in any bay or estuary during the closed season, except:

(a) In only the Pacific Ocean and Columbia River, Dungeness crab gear may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited Dungeness crab gear with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(2) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(3) Remove, damage, or otherwise tamper with crab buoy, pot or ring tags except when lawfully applying or removing tags on the vessel's buoys, pots or rings.

(4) Attach one crab pot or ring to another crab pot or ring by a common groundline or any other means that connects Dungeness crab gear together.

(5) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(6) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a Dungeness crab gear allocation has been issued to the permit required under OAR 635-005-0405(5).

(7) Deploy or fish more Dungeness crab gear than the number of pots and rings in aggregate assigned by the Dungeness Crab Pot Allocation Certificate or to use any vessel other than the vessel designated on the Dungeness Crab Pot Allocation Certificate, except to set gear as allowed under OAR 635-005-0405.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0490

Derelict Dungeness Crab Gear

Derelict Dungeness crab gear may be retrieved from the ocean, including the Columbia River, and transported to shore provided that:

(1) The retrieving vessel holds a valid boat license, issued pursuant to ORS 508.260, and the captain and crew of that vessel hold valid commercial fishing license(s), issued pursuant to ORS 508.235.

(2) The number of derelict Dungeness crab gear which may be retrieved per trip are as follows:

(a) From the opening of the ocean Dungeness crab fishery in the area where retrieval takes place until the second Monday in June of the same ocean Dungeness crab season: 25 derelict pots and rings in aggregate;

(b) From the second Monday in June through August 28: 50 derelict pots and rings in aggregate;

(c) August 29 through October 31: an unlimited number of derelict pots and rings may be retrieved.

(3) Upon retrieval from the ocean or Columbia River, the Dungeness crab gear must be un-baited.

(4) Crab from the retrieved Dungeness crab gear shall not be retained, except crab of legal size and sex may be retained by vessels holding a valid

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Dungeness crab permit, at such times and in such areas that Dungeness crab may otherwise be legally taken for commercial purposes.

(5) Immediately upon retrieval of Dungeness crab gear, the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot or ring retrieval, number of retrieved crab pots or rings in aggregate, location of retrieval, and retrieved Dungeness crab gear owner identification information.

(6) Any retrieved Dungeness crab gear must be transported to shore during the same fishing trip that retrieval took place.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0495

Size and Sex

(1) It is unlawful to take, land or possess for commercial purposes:

(a) Female Dungeness crab; or

(b) Male Dungeness crab less than 6-1/4 inches measured the shortest distance through the body of the crab from edge of shell to edge of shell from directly in front of the tenth anterolateral spine.

(2) Any undersized or female Dungeness crab taken from the Pacific Ocean must be released within 15 minutes of capture unharmed into the Pacific Ocean at the point of capture.

(3) It is unlawful to possess or transport Dungeness crab that have been mutilated prior to landing so that the size or sex cannot be determined.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 56, f. & ef. 4-26-76; FWC 112, f. & ef. 5-11-77, Renumbered from 625-010-0165, Renumbered from 635-036-0135; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; Renumbered from 635-005-0060, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0500

Fishery Defined

"Bay and Estuary Dungeness crab fishery" means all fishing for Dungeness crab (*Cancer magister*) for commercial purposes in Oregon bays and estuaries, except the Columbia River.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0505

Closed Season in Bays and Estuaries

(1) For the purposes of the Bay and Estuary Dungeness Crab Fishery, the Columbia River is considered the Pacific Ocean and is closed to all commercial harvest of Dungeness crab without a valid Ocean Dungeness Crab Permit pursuant to OAR 635-005-0405 and during the times specified in OAR 635-005-0465.

(2) It is unlawful to take, land or possess Dungeness crab for commercial purposes from any bay or estuary other than the Columbia River so taken:

(a) From January 1 through Labor Day;

(b) During December, if the adjacent ocean area is closed as provided in 635-005-0465;

(c) From midnight Friday through midnight Sunday of any week; and

(d) On all legal state and federal holidays.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; Renumbered from 635-005-0049, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0510

Fishing Gear

In all bays and estuaries other than the Columbia river, it is unlawful for commercial purposes to:

(1) Take, land or possess Dungeness crab with any gear other than crab rings.

(2) Operate more than 15 individual crab rings from any one fishing vessel.

(3) Possess, use, control, or operate on a vessel any crab ring which does not have a tag identifying it as belonging to that vessel.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0515

Size and Sex

(1) It is unlawful to take, land or possess for commercial purposes:

(a) Female Dungeness crab; or

(b) Male Dungeness crab less than 6-1/4 inches measured the shortest distance through the body of the crab from edge of shell to edge of shell from directly in front of the tenth anterolateral spine.

(2) Any undersized or female Dungeness crab taken from a bay must be released immediately unharmed into the fishing area and not brought to the dock.

(3) It is unlawful to possess or transport Dungeness crab that have been mutilated prior to landing so that the size or sex cannot be determined.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0520

Fishery Defined

"Red Rock, Box, Tanner and Other Crab fisheries" means all fishing for red rock crab (*Cancer productus*) in Oregon estuaries and the Pacific Ocean for commercial purposes, and all fishing for box crab (*Lopholithodes foraminatus*) Tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) in the Pacific Ocean for commercial purposes.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0525

Permits Required for Red Rock Crab and Box Crab

(1) It is unlawful to take, land or possess red rock crab from bays and estuaries without first obtaining a Commercial Shellfish and Intertidal Animal Harvest Permit pursuant to OAR 635-005-0245 and 635-005-0250.

(2) It is unlawful to take, land or possess red rock crab or box crab the Pacific Ocean without first obtaining an Ocean Dungeness Crab Permit pursuant to OAR 635-005-0405.

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

Stats. Implemented: ORS 506.109, 506.129, 506.306, 508.116 & 508.926

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0530

Tanner and Box Crab Taken in Trawl Nets

Notwithstanding OAR 635-005-0540, the Department may issue permits to land Tanner and box crab taken as incidental catch in trawl nets outside Oregon waters.

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

Stats. Implemented: ORS 506.109 & 506.129

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, Renumbered from 635-005-0056; Renumbered from 635-005-0063, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0535

Closed Season

(1) It is unlawful to take, land or possess 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 pursuant to OAR 635-005-0465.

(3) It is unlawful to take, land or possess red rock crab in Oregon bays or estuaries when the Dungeness crab fishery is closed pursuant to OAR 635-005-0505.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

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; Renumbered from 635-005-0064, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0540

Fishing Gear

(1) Except as provided in OAR 635-005-0530, 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 pots and crab pot longline gear must comply with the provisions contained in OAR 635-005-0275. "Crab pot longline gear" means a stationary and buoyed groundline with one or more crab pots or traps attached, with a line attached to surface floats and is used for the taking of only Tanner, Oregon hair or scarlet king crab.

(2) Except as provided in OAR 635-005-0530, 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 OAR 635-005-0480 and 635-005-0485.

(a) It is unlawful to take, land or possess red rock crab for commercial purposes from any bay or estuary with any gear other than crab rings.

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(b) A maximum of 15 individual crab rings may be used from any one fishing vessel in any bay or estuary red rock crab fishery.

(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.

(4) It is unlawful to possess, use, control, or operate on a vessel any crab pot, crab ring or crab longline gear which does not have a tag identifying it as belonging to that vessel.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

[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; Renumbered from 635-005-0065, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0545

Fishing Area

It is unlawful to take Tanner, Oregon hair and scarlet king crab from the Pacific Ocean shoreward of the 40 fathom contour line as defined in the Code of Federal Regulations Title 50, Section 660.71(k).

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

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; Renumbered from 635-005-0066, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0550

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 shall not be mutilated before landing so that species cannot be determined.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 149-2008, f. & cert. ef. 12-17-08; Renumbered from 635-005-0067, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0555

Incidental Catch Limits

All groundfish, Dungeness crab and salmon, as defined in OAR 635-005-0240, taken in any commercial Tanner, Oregon hair and scarlet king crab fishery must be returned to the water immediately.

(2) All groundfish and salmon, as defined in OAR 635-005-0240, taken in any commercial red rock or box crab fishery must be returned to the water immediately.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 149-2008, f. & cert. ef. 12-17-08; Renumbered from 635-005-0068, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0560

Tanner Crab Notification of Activity

(1) All Tanner crab fishers 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, all Tanner crab fishers 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, latitude and longitude or loran); and the amount of gear lost.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 149-2008, f. & cert. ef. 12-17-08; Renumbered from 635-005-0069, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0565

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel used to take any of the species outlined in OAR 635-005-0520.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0570

Organization of Rules

The Shrimp Section includes regulations for the Pink Shrimp, Spot and Coonstripe Shrimp, and Brine Shrimp fisheries.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0575

Fishery Defined

"Pink shrimp fishery" means the commercial fishery targeting smooth pink or ocean shrimp (*Pandalus jordani*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0580

Requirement for Pink Shrimp Permit

(1) It is unlawful to take, land or possess pink shrimp for commercial purposes without first obtaining a Pink Shrimp Permit pursuant to ORS 508.880 and 508.883.

(2) It is unlawful for a wholesaler, canner, or buyer to buy or receive pink shrimp taken in the pink shrimp fishery from a vessel for which the permit required by this rule has not been issued.

(3) The Pink Shrimp Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(4) No vessel may hold more than one Pink Shrimp Permit at any one time.

(5) Unless otherwise provided, Pink Shrimp Permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) Applications for Pink Shrimp Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of vessel may be required at the time of application.

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

Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.880

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0585

Permit Fee

(1) The annual fee for a Pink Shrimp Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.901.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0615. See ORS 508.907.

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

Stats. Implemented: ORS 506.109, 506.129 & 508.901

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0590

Eligibility Requirements for a Permit

(1) An individual or a commercial licensed vessel under ORS 508.260 is eligible to obtain a Pink Shrimp Permit required by OAR 635-005-0580:

(a) By renewal of the previous year's permit as specified in OAR 635-005-0605; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-005-0610.

(2) In making determinations regarding issuance or renewal of any limited entry permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements

ADMINISTRATIVE RULES

Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.886
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0595

Revocation and Refusal to Issue Permits

The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a Pink Shrimp Permit pursuant to ORS 508.898.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.898
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0600

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Pink Shrimp Permit established pursuant to OAR 635-005-0580, 635-005-0605 or 635-005-0615 is denied may make written request to the Board for review of the denial. The procedure for requesting review and the applicable standard of review of denial for a Pink Shrimp Permit shall be as pursuant to ORS 508.910.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(3) A \$125.00 non-refundable application fee for Board review will be charged. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to ORS 183.550.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.910
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0605

Renewal of Permit

(1) Pink Shrimp Permits may be renewed the following year by submitting to the Department a \$125.00 fee (plus a \$2.00 license agent fee) for resident applicants and a \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application date-stamped or post-marked by December 31 of the year the permit is sought for renewal.

(2) An application for renewal of a Pink Shrimp Permit shall be considered complete if it is legible, has all information requested in 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 December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.892
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0610

Lottery for Limited Entry Pink Shrimp Permits

(1) If the number of Pink Shrimp Permits issued in accordance with ORS 508.892 falls below 150, the Department may issue Pink Shrimp Permits by a lottery system pursuant to ORS 508.904. However, the total number of Pink Shrimp Permits issued shall not exceed 150.

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) 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.

(4) Only one application per vessel may be submitted for each permit fishery lottery.

(5) Any application which is not legible, has incomplete information, or is postmarked after the deadline shall 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 March 31 of the year for which the permit is issued.

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

Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0615

Transferability of Permits

Any transfer of a Pink Shrimp Permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. Pink Shrimp Permit holders may transfer a permit pursuant to ORS 508.907.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.907
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0620

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel which holds a valid Pink Shrimp Permit.

(2) Each permit holder or vessel operator is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the permit holder shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the permit holder shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0625

Closed Season

(1) It is unlawful to take, land, or possess pink shrimp from the Pacific Ocean from November 1 of any year through March 31 of the following year.

(2) Notwithstanding the provisions of section (1) of this rule, it is lawful to possess pink shrimp taken from the Pacific Ocean during the period November 1 of any year through March 31 of the following year, if such shrimp were taken north of 48°30' north latitude (U.S.-Canada border).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 256, f. 12-1-72, ef. 12-15-72; FWC 154(Temp), f. & ef. 10-12-77 through 2-8-78, Renumbered from 625-010-0240; FWC 167, f. & ef. 10-23-77; FWC 50-1978, f. & ef. 9-27-78; FWC 22-1979(Temp), f. 7-18-79, ef. 7-19-79; Suspended by FWC 30-1979(Temp), f. & ef. 8-16-79, Renumbered from 635-036-0150; FWC 24-1980(Temp), f. & ef. 5-30-80; Suspended by FWC 34-1980(Temp), f. & ef. 7-1-80; FWC 57-1980(Temp), f. & ef. 10-3-80; FWC 59-1980(Temp), f. & ef. 10-21-80; FWC 36-1981(Temp), f. & ef. 9-22-81; FWC 19-1982, f. & ef. 3-22-82; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 94-1987(Temp), f. & ef. 10-30-87; Renumbered from 635-005-0185, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0630

Fishing Gear

(1) It is unlawful to take pink shrimp for commercial purposes by any means other than trawl net or pots.

(2) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved rigid-grate bycatch reduction device is used in each net. A rigid-grate bycatch reduction device uses a rigid panel of narrowly spaced bars to guide fish out of an escape hole in front of the panel, generally in the top of the net. The panel may be hinged to facilitate rolling over a net reel. An approved rigid-grate bycatch reduction device must meet the following criteria:

(a) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net, such that there is no space between the panel and the net that will allow a 110 mm sphere to pass beyond the panel, into the terminal area of the codend;

(b) None of the openings between the bars in the rigid panel may exceed 0.75 inches.

(c) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

(d) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

(3) All bycatch reduction devices and codends used for trawl fishing for pink shrimp must be readily accessible and made available for inspection at the request of an authorized agent of the state. No trawl gear may be removed from the vessel prior to offloading of shrimp.

(4) It is unlawful to modify bycatch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0245, Renumbered from 635-036-0155; FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 31-2001, f. & cert. ef. 5-4-01; DFW 63-2001(Temp), f. 7-24-01, cert. ef. 8-1-01 thru 10-31-01; DFW 56-2002(Temp), f. 5-29-02, cert. ef. 7-1-02 thru 10-31-02; DFW 24-2003, f. & cert. ef. 3-26-03; DFW 158-2010, f. 12-6-10, cert. ef. 1-1-11; Renumbered from 635-005-0190, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0635

Mesh Restriction

It is unlawful to land shrimp taken south of the Oregon-California border with nets having a mesh size of less than 1-3/8 inches between knots.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FWC 26-1982, f. & ef. 4-30-82; FWC 34-1982, f. & ef. 6-1-82; FWC 35-1995, f. 5-3-95, cert. ef. 5-5-95; Renumbered from 635-005-0186, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0640

Incidental Catch Limit

(1) It is unlawful for a commercial fishing vessel taking shrimp for commercial purposes to land an incidental catch of groundfish in excess of 500 pounds per day, multiplied by the number of days of the fishing trip, not to exceed 1,500 total pounds of groundfish for the fishing trip.

(2) In addition to section (1) of this rule, the following sublimits also apply and are counted toward the daily and fishing trip limits:

- (a) Lingcod: 300 pounds per month; and
- (b) Sablefish: 2,000 pounds per month.

(3) The amount of groundfish landed described in sections (1) and (2) of this rule shall not exceed the amount of pink shrimp landed on any single fishing trip.

(4) It is unlawful to have on board a commercial fishing vessel taking pink shrimp for commercial purposes any canary rockfish, yelloweye rockfish, and any species of thornyhead.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0250, Renumbered from 635-036-0160; FWC 10-1983, f. & ef. 3-1-83; FWC 34-1983, f. & ef. 8-1-83; FWC 41-1983 (Temp), f. & ef. 9-6-83; FWC 42-1983(Temp), f. 9-9-83, ef. 9-10-83; FWC 112-90, f. 10-3-90, cert. ef. 10-5-90; Renumbered from 635-005-0195, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0645

Maximum Count Per Pound

(1) It is unlawful to possess or land pink shrimp from any one trip or landing which exceeds an average count of 160 whole shrimp per pound. This rule shall not apply to landings or possession of less than 3,000 pounds of pink shrimp.

(2) To determine average count per pound when a landing exceeds 3,000 pounds of shrimp, one sample must be taken from each one thousand pounds up to a maximum requirement of 20 samples. The sampling unit shall consist of at least one pound of whole unbroken shrimp.

(3) For the purpose of determining count per pound "whole shrimp" and "whole unbroken shrimp" are defined as shrimp in which the body is substantially intact, including an identifiable carapace, abdomen, and telson (tail). It is not intended to require shrimp to have an unbroken rostrum, complete set of legs, antennae, or other appendages.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FWC 34-1982, f. & ef. 6-1-82; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; Renumbered from 635-005-0200, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0650

Fishery Defined

"Spot and coonstripe shrimp fisheries" means the commercial fisheries for spot shrimp (*Pandalus platyceros*) and coonstripe shrimp (*Pandalus danae*) in the Pacific Ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0655

Closed Season

There is no closed season for the taking of spot or coonstripe shrimp.
Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 113-2003(Temp), f. 11-21-03, cert. ef. 11-21-03 thru 12-31-03; Administrative correction 8-2-04; Renumbered from 635-005-0205, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0660

Fishing Gear

(1) It is unlawful to take spot or coonstripe shrimp for commercial purposes by any means other than pots or traps, except trawls legal for the taking of pink shrimp may be used during open pink shrimp seasons and trawls legal for the taking of groundfish may be used when the established seasons for those species are open.

(2) Pots or traps used to take spot or coonstripe shrimp must comply with the following provisions:

- (a) Pots or traps must have entrance tunnels no smaller than 1.5 inches at the narrowest point and no larger than 3.0 inches at the widest point;
- (b) No triggers of any kind may be used on the inside of entrance tunnels; and

(c) Pots or traps must have with at least one escape panel constructed with #21 or smaller untreated cotton in such manner than an opening of at least five inches in diameter will result when the twine deteriorates.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 15-1986, f. & ef. 5-20-86; Renumbered from 635-005-0210, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0665

Fishing Area

It is unlawful to take, land or possess spot or coonstripe shrimp from areas other than the Pacific Ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; Renumbered from 635-005-0215, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0670

Incidental Catch Limit

Provisions under 635-005-0640 for the possession of incidental catch apply to the taking of spot and coonstripe shrimp.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; Renumbered from 635-005-0220, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0675

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel used to take any of the species specified in OAR 635-005-0650.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0680

Fishery Defined

"Brine shrimp fishery" means the commercial fishery for adult brine shrimp (*Artemia* spp.) from Lake Abert (Lake County).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0685

Requirement for Brine Shrimp Permit

(1) It is unlawful to take, land or possess brine shrimp for commercial purposes without first obtaining a Brine Shrimp Permit issued pursuant to OAR 635-005-0690 through 635-005-0715.

(2) It is unlawful for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(3) The Department may issue no more than three permits required by section (1) of this rule.

(4) The Brine Shrimp Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and ORS 508.260.

ADMINISTRATIVE RULES

(5) No individual may hold more than one Brine Shrimp Permit at any one time.

(6) Unless otherwise provided, Brine Shrimp Permits must be purchased by January 31 of the year the permit is sought for renewal.

(7) Applications for Brine Shrimp Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0690

Permit Fee

(1) The annual fee for a Brine Shrimp Permit is \$100.00 (plus a \$2.00 license agent fee) for applicants.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0715.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0695

Eligibility Requirements for a Permit

(1) A commercial fisher licensed under ORS 508.235 is eligible to obtain the permit required by OAR 635-005-0685:

(a) By renewal of previous year's permit; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-005-0710.

(2) In making determinations regarding issuance or renewal of any limited entry permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0700

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Brine Shrimp Permit established pursuant to OAR 635-005-0685, 635-005-0705 and 635-005-0715 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(2) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permit if the Board finds strict adherence to the requirements were not met as a result of undue hardship as defined in OAR 635-005-0240.

(3) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(4) The Board may delegate to the Department its authority to waive requirements for renewal of Brine Shrimp Permits in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(5) For those fisheries requiring a \$125.00 application fee for Board review, the fee is non-refundable. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0705

Renewal of Permit

(1) Brine Shrimp Permits may be renewed the following year:

(a) By submitting to the Department a \$100.00 fee (plus a \$2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(b) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(2) An application for renewal of a Brine Shrimp Permit shall be considered complete if it is legible, has all information requested in 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 December 31 of the permit year sought, the individual may not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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 may not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0710

Lottery for Limited Entry Brine Shrimp Permits

(1) If the number of Brine Shrimp Permits issued in accordance with OAR 635-005-0685 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 may not exceed three.

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) Only one application per vessel may be submitted for each permit fishery lottery.

(4) 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 March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0715

Transferability of Permits

Brine Shrimp Permits are transferable.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0720

Organization of Rules

The Other Shellfish and Marine Invertebrate Section includes regulations for the Weathervane Scallop, Sea Urchin, Crayfish, Oyster, Squid, Octopus and other minor shellfish and invertebrate fisheries.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0725

Fishery Defined

"Weathervane scallop fishery" means the commercial fishery for weathervane scallops (*Patinopecten caurinus*) in the Pacific Ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0730

Additional License Requirement

It is unlawful to take, distribute or process oysters, clams, mussels and weathervane scallops intended for human consumption without first obtaining a Shellfish Sanitation Certificate as specified in OAR 635-005-0255.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0735

Requirement for Weathervane Scallop Permit

(1) It is unlawful to take, land or possess weathervane scallops without first obtaining a Weathervane Scallop Permit issued pursuant to ORS 508.840 and 508.843.

(2) It is unlawful for a wholesaler, canner, or buyer to buy or receive weathervane scallops taken in the weathervane scallop fishery from a vessel for which the permit required by this rule has not been issued.

(3) A Weathervane Scallop Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

ADMINISTRATIVE RULES

(4) No vessel may hold more than one Weathervane Scallop Permit at any one time.

(5) Unless otherwise provided, Weathervane Scallop Permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) Applications for Weathervane Scallop Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.840
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0740

Permit Fee

(1) The annual fee for a Weathervane Scallop Permit is \$125.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.858.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0770. See ORS 508.864.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.858
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0745

Eligibility Requirements for a Permit

(1) An individual licensed under ORS 508.235 or a commercial licensed vessel under ORS 509.260 is eligible to obtain a Weathervane Scallop Permit required by OAR 635-005-0735:

(a) By renewal of the previous year's permit as specified in OAR 635-004-0760; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-004-0765.

(2) In making determinations regarding issuance or renewal of any limited entry permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 508.846 & 508.852
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0750

Revocation and Refusal to Issue Permits

The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a Weathervane Scallop Permit pursuant to ORS 508.855.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.867
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0755

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a Weathervane Scallop Permit established pursuant to OAR 635-005-0735, 635-005-0760 and 635-005-0770 is denied may make written request to the Board for review of the denial. The procedure for requesting review and the applicable standard of review of denial for a Weathervane Scallop Permit shall be as pursuant to ORS 508.867.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(3) For those fisheries requiring a \$125.00 application fee for Board review, the fee is non-refundable. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.867
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0760

Renewal of Permit

(1) Weathervane Scallop Permits may be renewed the following year by submitting to the Department a \$125.00 fee (plus a \$2.00 license agent fee) for resident applicants and a \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application date-stamped or postmarked by December 31 of the year the permit is sought for renewal.

(2) An application for renewal of a Weathervane Scallop Permit shall be considered complete if it is legible, has all information requested in 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 December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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 may not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.849
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0765

Lottery for Limited Entry Weathervane Scallop Permits

(1) If the number of Weathervane Scallop Permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue Weathervane Scallop Permits by a lottery system pursuant to ORS 508.861. However, the total number of Weathervane Scallop Permits issued shall not exceed 25.

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) 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.

(4) Only one application per vessel may be submitted for each permit fishery lottery.

(5) Any application which is not legible, has incomplete information, or is postmarked after the deadline shall 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 March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.861
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0770

Transferability of Permits

Any transfer of a Weathervane Scallop Permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. Weathervane Scallop Permit holders may transfer a permit pursuant to ORS 508.864.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.864
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0775

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel which holds a valid Weathervane Scallop Permit.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0780

Closed Season

There is no closed season on weathervane scallops taken for commercial purposes.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0505, Renumbered from 635-036-0260; Renumbered from 635-005-0170, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0785

Fishing Gear

It is unlawful to take weathervane scallops for commercial purposes by any means other than trawl gear having 3-inch or larger mesh throughout.

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

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Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0510, Renumbered from 635-036-0265; FWC 24-1981(Temp), f. & ef. 7-1-81; FWC 27-1981, f. & ef. 8-14-81; Renumbered from 635-005-0175, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0790

Fishery Defined

“Sea urchin fishery” means the commercial fisheries for red sea urchins (*Strongylocentrotus franciscanus*) and purple sea urchins (*Strongylocentrotus purpuratus*).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0795

Requirement for Sea Urchin Permit

(1) It is unlawful to take, land or possess sea urchins for commercial purposes without first obtaining a Sea Urchin Permit issued pursuant to OAR 635-005-0800 through OAR 635-005-0830.

(2) It is unlawful for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1) of this rule has not been issued.

(3) A Sea Urchin Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(4) No individual may hold more than one Sea Urchin Permit at any one time.

(5) Unless otherwise provided, Sea Urchin Permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) Applications for Sea Urchin Permits shall be in such form and contain such information as the Department may prescribe.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.760
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0800

Permit Fee

(1) The annual fee for a Sea Urchin Permit is \$100.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.760.

(2) A fee of \$100.00 shall be charged for each transfer of participation rights under OAR 635-005-0830. See ORS 508.760.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.760
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0805

Eligibility Requirements for a Permit

(1) An individual licensed as a commercial fisher under ORS 508.235 is eligible to obtain a Sea Urchin Permit required by OAR 635-005-0795:

(a) By renewal of the previous year's permit; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-005-0825.

(2) In making determinations regarding issuance or renewal of any limited entry permit, the Department and the Commercial Fishery Permit Board may consider as evidence of permit qualifications or requirements Department records and such receipts, accounts, contracts and other business records of private parties as the Department or the Board considers reliable evidence of the qualifications or requirements in question.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.760
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0810

Revocation and Refusal to Issue Permits

The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of a Sea Urchin Permit pursuant to ORS 508.485 and 508.490.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.760
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0815

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of a sea urchin established pursuant to OAR 635-005-0795, 635-005-0820 and 635-005-0830 is denied may make written request to the Board for review of the denial. The procedure for requesting review and the applicable standard of review of denial for a Sea Urchin Permit shall be as pursuant to ORS 508.760. For the sea urchin fishery, the Board may waive require-

ments for renewal of permits if the Board finds that strict adherence to these requirements were not met as a result of undue hardship as defined in OAR 635-005-0240.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a Letter of Delegation to the Department.

(3) For those fisheries requiring a \$125.00 application fee for Board review, the fee is non-refundable. However, if the Board grants the applicant's request, the non-refundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to ORS 183.550.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.762
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0820

Renewal of Permit

(1) Sea Urchin Permits may be renewed the following year:

(a) By submitting to the Department a \$100.00 fee (plus a \$2.00 license agent fee) for resident applicants and a \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(b) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of the Commercial Fishery Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing requirement by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(2) An application for renewal of a Sea Urchin Permit shall be considered complete if it is legible, has all information requested in 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 January 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.762
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0825

Lottery for Limited Entry Sea Urchin Permits

(1) If the total number of Sea Urchin Permits which have been renewed, and for which an appeal is pending with the Commercial Fishery Permit Board and awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April. However, as a result of any such lottery, the total number of permits issued shall not exceed 30.

(2) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery.

(3) An individual shall not already hold a valid Sea 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.

(4) 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 Sea Urchin Permits to any Department office, so that only one valid permit is held.

(5) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or post-marked 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 \$100.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 fee (plus a \$2.00 license agent fee) for nonresident applicants.

(6) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and

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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.

(7) 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.

(8) 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 (7) of this rule.

(9) 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.

(10) 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.

(11) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(12) Only one application per vessel may be submitted for each permit fishery lottery.

(13) Any application which is not legible, has incomplete information, or is postmarked after the deadline shall 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 March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.762
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0830

Transferability of Permits

(1) Any transfer of a Sea Urchin Permit without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of Sea Urchin Permits:

(2) The Department shall approve the transfer of any permit to any purchaser of the permit, provided that not more than one sale or transfer of the permit occurs within that calendar year;

(3) No Sea Urchin Permit issued to an individual through the lottery after 1998 may be transferred to another individual until a cumulative total of 20,000 pounds of sea urchins have been landed on commercial fish receiving tickets by the individual issued the permit through the lottery.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 508.762
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0835

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fisher who holds a valid Sea Urchin Permit.

(2) Each permit holder is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the permit holder shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the permit holder shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0840

Closed Seasons and Areas

It is unlawful for commercial purposes to take, land or possess sea urchins:

(1) Which have been taken in water depths shallower than ten feet below mean lower low water.

(2) Within the following areas:

(a) From Orford Reef, described as the area encompassed by parallels of Latitude 42°46'N and 42°49'N from May 1 through October 31;

(b) Within 1,000 feet of Pyramid Rock on Rogue Reef described by the area encompassed by parallels of Latitude 42°26.4'N and 42°26.9'N and by meridians of Longitude 124°28.4'W and 124°27.8'W, or within the rectangle marked by corner buoys from May 1 through August 31; or

(c) The Special Regulation Marine Areas described in OAR 635-005-0260.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FWC 85-1987, f. 10-6-87, ef. 1-1-88; FWC 117-1989, f. 11-22-89, cert. ef. 12-1-89; FWC 50-1990, f. 6-15-90, cert. ef. 6-18-90; FWC 118-1990, f. 10-24-90, cert. ef. 10-22-90; FWC 12-1991, f. & cert. ef. 2-20-91; FWC 26-1992, f. 4-21-92, cert. ef. 4-22-92; FWC 96-1994, f. 12-28-94, cert. ef. 1-1-95; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-005-0180, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0845

Prohibitions

(1) It is unlawful for commercial purposes to take, land or possess sea urchins:

(a) Where more than two divers were in the water off any one vessel at the same time;

(b) Where more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any vessel while harvesting, possessing, or transporting sea urchins;

(c) Unless the vessel displays the vessel's federal document or Marine Board numbers on a weather deck so as to be visible from above. The number shall contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet in length and at least ten inches high for vessels 65 feet or less. The operator of the vessel shall keep the identifying markings clearly legible and in good repair, and shall ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the vessel number from an enforcement vessel or aircraft.

(2) For each trip, any permit holder shall clearly identify and keep separate until processed all sea urchins taken by that permit holder.

(3) Notwithstanding any other provision in these regulations, no person other than the holder of a current Sea Urchin Permit issued by the Department is allowed to dive in the water to take sea urchins or to otherwise assist, while submerged, in the harvest of sea urchins.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0850

Size and Catch Limits

Size and catch limits in the sea urchin fishery are as follows:

(1) It is unlawful to take, land or possess for commercial purposes, more than 50 sea urchins (purple and red combined) per permit holder, per day, per trip between two and three and one-half inches in diameter (shell diameter — not including spines), except as provided in section (2) of this rule for purple sea urchins. There is no limit on the number of red sea urchins less than two inches or greater than three and one-half inches in shell diameter.

(2) A holder of a current sea urchin permit may take more than 50 purple sea urchins between two inches and three and one-half inches in diameter, provided the permit holder obtains a Special Commercial Purple Sea Urchin Permit available at the Charleston ODFW Field Office. The Department may attach terms and conditions to any special commercial permit including, but not limited to, on-board observers, area or time limits, and preharvest dive surveys of urchin beds.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 508.760

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0855

Fishery Defined

“Crayfish fishery” means the commercial fishing for crayfish species (*Pacifastacus* sp) in waters of this state.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0860

Closed Season

It is unlawful to take crayfish for commercial purposes from November 1 of any year through March 31 of the following year.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0365, Renumbered from 635-036-0225; FWC 22-1988, f. 3-21-88, cert. ef. 4-1-88; Renumbered from 635-005-0070, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0865

Fishing Gear

It is unlawful to take crayfish for commercial purposes by any means other than crayfish pots or ring nets.

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Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0370, Renumbered from 635-036-0230; FWC 22-1988, f. 3-21-88, cert. ef. 4-1-88; Renumbered from 635-005-0075, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0870

Size Limit

It is unlawful to take for commercial purposes crayfish which are less than 3-5/8 inches long. Crayfish will be measured from the tip of the bony spike extending between and beyond the eyes (acumen) to the distal edge of the last bony plate in the tail (telson). Any undersized crayfish taken must be immediately returned unharmed to the water.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0375, Renumbered from 635-036-0235; FWC 22-1988, f. 3-21-88, cert. ef. 4-1-88; Renumbered from 635-005-0080, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0875

Protection of Females

Any crayfish taken with eggs attached must be returned immediately unharmed to the water. Possession of crayfish with eggs attached is prohibited.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FWC 22-1988, f. 3-21-88, cert. ef. 4-1-88; Renumbered from 635-005-0082, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0880

Identification of Gear

All vessels, traps, buoys, liveboxes, holding pens, boxes, bags, or other containers used to take, hold, or transport crayfish must be labeled with an identification number issued by the Department.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FWC 22-1988, f. 3-21-88, cert. ef. 4-1-88; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-005-0084, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0885

Closed Area

It is unlawful to take, land or possess crayfish for commercial purposes from Malheur Reservoir (Malheur County), South Twin Lake (Deschutes County), and the Williamson River (Klamath County).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FWC 33-1984, f. 7-25-84, ef. 8-1-84; FWC 9-1986, f. 3-26-86, ef. 3-30-86; FWC 22-1988, f. 3-21-88, cert. ef. 4-1-88; FWC 102-1989, f. 9-29-89, cert. ef. 10-1-89; Renumbered from 635-005-0085, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0890

Fishery Defined

"Oyster fishery" means the commercial cultivation of oysters (*Crassostrea* spp.) in waters of this state.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0895

Additional License Requirement

It is unlawful to take, distribute or process oysters, clams, mussels and scallops intended for human consumption without first obtaining a Shellfish Sanitation Certificate issued pursuant to OAR 635-005-0255.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0900

Oyster Import Applications and Permit

(1) It is unlawful for any person to import oysters into this state for the purpose of planting or to plant the same in the waters of this state without first having obtained a permit to do so from the Director.

(2) Such application shall be in the form of a letter and shall include the following information: maximum quantity to be imported, name of exporter, the approximate time the shipment will be made, and the name of the person or agency that will inspect the seed including a notarized certification from such person or agency at the time the oysters are inspected, declaring them to the best of his knowledge free from disease, infestation pests, and other substances which might endanger shellfish in the waters of this state.

(3) The Director shall issue a permit to import oysters for planting in the waters of this state when it has been established to his satisfaction that a qualified person or agency will inspect the oysters and certify them as

being free of disease, infestation pests, and other substances which might endanger shellfish in the waters of this state.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 140, f. 3-4-66; FWC 30-1985, f. 6-27-85, ef. 7-1-85, Renumbered from 625-010-0285, Renumbered from 635-036-0175; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-005-0140, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0905

Prohibited Activities in Restricted Shellfish Areas

(1) All waters, tidelands, and oyster handling facilities operated in conjunction with said water and tidelands are defined as a restricted shellfish area.

(2) It is unlawful for any person to move or transfer from a restricted shellfish area any oysters, any marine organisms or other material whatsoever adversely affecting oysters, without first obtaining written permission from the Director.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 140, f. 3-4-66, Renumbered from 625-010-0290, Renumbered from 635-036-0180; FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-005-0145, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0910

Oyster Seasons and Gear

It is unlawful to take oysters for either personal use or commercial purposes from natural oyster beds located on unoccupied state lands.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 143, f. 3-4-66, Renumbered from 625-010-0295, Renumbered from 635-036-0185; FWC 28-1982, f. & ef. 5-13-82; Renumbered from 635-005-0150, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0915

Fishery Defined

"Squid fishery" means the commercial fisheries for squid species in the orders Myopsida, Oegopsida and Sepioidea, including, but not limited to: market squid (*Loligo opalescens*); Humboldt squid (*Dosidicus gigas*); magister armhook squid (Berryteuthis magister); boreopacific armhook squid (*Gonatopsis borealis*); robust clubhook squid (*Moroteuthis robusta*) and boreal clubhook squid (*Onychoteuthis borealijaponicus*) in the Pacific Ocean.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0920

Market Squid Fishery

Market squid (*Loligo opalescens*) are federally managed by the Coastal Pelagic Species Fishery Management Plan, and are subject to all federal regulations adopted by reference in OAR 635-004-0375.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0925

Market Squid Harvest Guideline

Prior to reaching a harvest of 4.5 million pounds of squid, with not more than 3 million pounds taken north or south of Heceta Head, the Commission will hold a public hearing to evaluate the fishery.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0930

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel from which any species of squid are taken, regardless of gear.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request from an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

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635-005-0935

Fishery Defined

"Octopus fishery" means the commercial fisheries for octopus species in the order Octopoda, including, but not limited to the Pacific giant octopus (*Enteroctopus dofleini*) and East Pacific red octopus (*Octopus rubescens*) in the Pacific Ocean.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

635-005-0940

Logbook Required

(1) The Department shall make available a logbook to each licensed commercial fishing vessel from which any species of octopus are taken, regardless of gear.

(2) The vessel operator of such vessel is responsible for maintaining the logbook in an accurate and truthful manner and in accordance with the instructions contained therein.

(3) Upon request of an authorized representative of the Department or the Oregon State Police, the vessel operator shall permit examination and transcription of information of such logbook.

(4) Upon request of an authorized representative of the Department, the vessel operator shall surrender a legible copy of such logbook.

(5) Information so received by the Department shall be considered confidential.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12

Rule Caption: Oregon Commercial Fishing Regulations, Division 635-006 Restructure and Reorganization.

Adm. Order No.: DFW 77-2012

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Rules Adopted: 635-006-0209

Rules Amended: 635-006-0001, 635-006-0010, 635-006-0134, 635-006-0135, 635-006-0140, 635-006-0150, 635-006-0160, 635-006-0165, 635-006-0205, 635-006-0207, 635-006-0210, 635-006-0211, 635-006-0212, 635-006-0213, 635-006-0215, 635-006-0225, 635-006-0235, 635-006-0405, 635-006-0425, 635-006-1005, 635-006-1015, 635-006-1025, 635-006-1035, 635-006-1060, 635-006-1065, 635-006-1075, 635-006-1085, 635-006-1095, 635-006-1200, 635-006-1210

Rules Repealed: 635-006-0133, 635-006-0800, 635-006-0810, 635-006-0820, 635-006-0830, 635-006-0840, 635-006-0850, 635-006-0870, 635-006-0880, 635-006-0890, 635-006-0900, 635-006-0910, 635-006-0915, 635-006-0930, 635-006-0940, 635-006-0950, 635-006-1010, 635-006-1110

Subject: This is part 3 (of 3) of an effort to restructure and reorganization Oregon's regulations governing commercial fisheries, comprising of new rules and amendments to and renumbering of existing rules. Modifications increase the clarity, consistency, and ease of use without changing the intent or practical effect of the regulations. Housekeeping and technical corrections to the regulations were performed to ensure consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0001

Definitions

As used in division 6 regulations:

(1) "Board" means the Commercial Fishery Permit Board.

(2) "Boat" means any vessel, any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish, as specified in ORS 506.006.

(3) "Buy" includes offer to buy, barter, exchange or trade.

(4) "Commercial fishing license" means the commercial fishing licenses required by ORS 508.235 and, for purposes of the Limited Fish Seller Permit, includes an Albacore Tuna Landing License.

(5) "Commercial purposes" means taking food fish with any gear *unlawful* for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of dispos-

ing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(6) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(7) "Department" means the State Department of Fish and Wildlife, as specified in ORS 506.006.

(8) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(9) "Fair market value" shall be based on the market price of food fish or shellfish at the same time and place that the fish are landed, or the price established in OAR 635-006-0232 when the market price cannot be determined. For species not listed in 635-006-0232, fair market value shall be based on the average price per pound paid to law enforcement officials for any fish or shellfish confiscated from persons landing legal overages, or the average ex-vessel price per pound paid for that species in that port during the month in which the overage occurred, whichever is greater. Unless otherwise noted, the fair market value is the price per pound and is based on round weight.

(10) "Fish buyer" means an individual employed by a wholesale fish dealer or food fish canner to purchase or receive food fish or shellfish from commercial fishers at locations other than the licensed premises of the wholesale fish dealer or food fish canner.

(11) "Fish-buying station" means a location other than the licensed premises of a wholesale fish dealer or food fish canner at which such wholesale fish dealer or food fish canner purchases or receives food fish or shellfish from commercial fishers.

(12) "Fishing" means catching, taking or harvesting food fish that results in or can be reasonably expected to result in the sale, barter, trade or other disposition of fish for other than personal use or consumption.

(13) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding net with the sections of netting made and joined to create bagging. It is hauled with purse rings and is generally much smaller in size than a purse seine net;

(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) "Purse seine" means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) "Seine" means any non-fixed net other than a trawl or gillnet;

(j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;

(m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels;

(o) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation;

(p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(14) "Fishing trip" means a period of time between landings when fishing is conducted.

(15) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction, as specified in ORS 506.036.

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(16) "Food fish canner" means a wholesale fish dealer who cans food fish including shellfish in hermetically sealed containers whereby no further preservation, artificial or otherwise, is required.

(17) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660.

(18) "Harvester" means any person legally authorized to take food fish for commercial purposes.

(19) "Import" means to transport into Oregon from outside the State of Oregon.

(20) "Inland waters" means all waters of the state except the Pacific Ocean.

(21) "Land" or "landing" means to begin transfer of fish from a harvester to a buyer. Once transfer begins, all fish aboard the vessel or from the harvest area are counted as part of the landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation.

(22) "Landing fees" means all fees due to the Department based on the pounds of fish or value of fish landed.

(23) "Length" or "Length Overall" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform.

(24) "Limited fish seller" means any person who holds a valid Oregon commercial fishing license and who has obtained an annual Limited Fish Seller Permit which enables the fisher to sell any species of food fish, taken in lawful activity directly from his or her boat, as specified in ORS 508.550.

(25) "Limited fish seller — non-treaty Columbia River Gillnet Salmon Vessel Permit fishery" means a person who holds a valid Oregon commercial fishing license, a Columbia River Gillnet Salmon Vessel Permit, and who has obtained an annual limited fish seller permit which enables the fisher to sell any species of food fish, taken in lawful activity directly from his or her boat or at locations away from the boat.

(26) "Non-reporting fish dealer" means a wholesale fish dealer or fish bait dealer who buys food fish exclusively from other wholesale fish dealers or bait dealers.

(27) "Overage" means any landing or portion of a landing that exceeds groundfish trip limits. Groundfish trip limits are approved by Pacific Fisheries Management Council and implemented by the National Marine Fisheries Service.

(28) "Owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. Owner does not include a leasehold interest.

(29) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except in the Columbia River the Pacific Ocean has the definition specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(30) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(31) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting. Cooking crab is not considered processing.

(32) "Processor" means a person who buys fresh food fish from a licensed commercial fisher or a wholesale fish dealer and processes food fish for sale through retail outlets or for sale to the ultimate consumer.

(33) "Purchase" means to obtain by paying money or its equivalent, trade, or barter.

(34) "Receive" or "Receiving" means to take or come into possession of.

(35) "Replacement vessel" means a vessel purchased to replace a permitted vessel which had been lost due to fire, capsizing, sinking or other event.

(36) "Resident" means an actual bona fide resident of this state for at least one year immediately prior to application.

(37) "Retail fish bait dealer" means a person who buys fresh food fish or shellfish from a wholesale fish dealer or wholesale fish bait dealer, and sells to the ultimate consumer for use as bait.

(38) "Retail fish dealer" means a person who buys fresh food fish or shellfish from wholesale fish dealers, undertakes limited processing activity (limited to loining of tuna, filleting, smoking, steaking, or pickling food fish or shellfish), and sells only to the ultimate consumer.

(39) "Retain" means to keep in possession or use.

(40) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(41) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(42) "Shellfish canner" means a wholesale fish dealer who cans only shellfish in hermetically sealed containers whereby no further preservation, artificial or otherwise, is required.

(43) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(44) "Take home" means food fish that are sold commercially to a licensed wholesale fish dealer, reported on a fish receiving ticket and then purchased back for the purpose of private use by the harvester.

(45) "Transport" means, for the purposes of OAR 635-006-0165, to move the food fish after landing.

(46) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

- (A) Period 1: January through February;
- (B) Period 2: March through April;
- (C) Period 3: May through June;
- (D) Period 4: July through August;
- (E) Period 5: September through October; and
- (F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 7 consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(47) "Ultimate consumer" means the party that utilizes the product as food, including restaurants.

(48) "Value" means the monetary value of the food fish, or parts thereof, including eggs and other by-products, at the point of landing as usually determined by the first exchange between the harvester and the first purchaser. In addition:

(a) Value is typically the amount of money which the first purchaser pays at the time and place that the fish are off-loaded from a vessel, or brought to shore if there is no vessel involved in harvesting, before any reductions or deductions in the amount of money as a result of the dealer furnishing ice, fuel, food or other commodities; and

(b) Value includes bonuses and other payments based directly on the quantity or quality of food fish exchanged, regardless of the time of payment of such bonuses or other payments; and

(c) Value includes any payments based on the proportion or percentage of processed products recovered from the food fish landed in the round or other form; and

(d) Value for food fish not sold by the harvester is the value received for comparable fish sold to a wholesale fish dealer at the same time and place that the fish are landed; and

(e) Value for food fish purchased from a harvester, by the harvester when acting as a wholesale fish dealer, is the price that is or would be paid to any other harvester for the same fish; and

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(f) Value for food fish sold by a limited fish seller is the retail price received by the harvester from the first purchaser; and

(g) Value for food fish imported from out of state but not previously taxed out of state is the price paid for the fish by the first Oregon purchaser.

(49) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel or permit owner or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(50) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

(51) "Weighbacks" means fish or shellfish with no commercial value.

(52) "Wholesale fish bait dealer" means a person who buys food fish or shellfish, or parts thereof, from a licensed commercial fisher, licensed commercial bait fisher, or licensed angler, and sells or uses such food fish or shellfish for bait, scientific or educational purposes, or live public display.

(53) "Wholesale fish dealer" means a person who:

(a) Buys food fish or shellfish from a commercial fisher; or

(b) Processes food fish or shellfish or any part thereof; or

(c) Sells food fish or shellfish to retail dealers or other wholesale fish dealers.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 513.020

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0010

Possession of Unlawful Fishing Gear Prohibited

It is *unlawful* to have on board any commercial fishing boat while fishing or landing food fish, taken for commercial purposes, any fishing gear which is not authorized by statute or Department of Fish and Wildlife regulation for use in any commercial fishing or which does not conform to the specifications established for such fishing gear.

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

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: FC 136, f. 12-20-65, ef. 1-1-66, Renumbered from 625-020-0005; Renumbered from 635-036-0355, 1979; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0134

Bonding Requirements

In accordance with ORS 508.415 and 508.550, the minimum bond amount is \$25.00 for wholesale bait dealers; \$1,000.00 for wholesale fish dealers, fish canners, and shellfish canners; and \$200.00 for limited fish sellers. Bond amounts are determined by a total of the landing fees due for the three highest sales months of the previous year, and may be changed at the discretion of the Department. No bond is required of non-reporting fish dealers.

Stat. Auth.: ORS 506.109, 506.119, 506.129 & ORS 802

Stats. Implemented: ORS 506.109, 506.119, 506.129 & 802

Hist.: FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0135

Alteration, Borrow, or Loan License Unlawful

It is *unlawful* for any person to alter, borrow, or loan any license issued by the Director.

Stat. Auth.: ORS 508.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.119, 506.129 & 506.306

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-040-0055, Renumbered from 635-036-0535; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0140

Boat License

(1) A boat license is issued in accordance with ORS 508.035 and 508.260 of the commercial fishing laws and is required for the owner or operator of any boat used in taking food fish or shellfish for commercial purposes, except for the taking of clams or crayfish.

(2) A pair of decals bearing the last two numbers of the year for which the license is issued is included with the license for placement on the

licensed boat. The license year decals shall be affixed to the licensed boat in a conspicuous place on each side of the boat on the superstructure as near midship as practicable.

(3) In accordance with subsection (3) of ORS 508.260, the assigned identification number of each licensed commercial fishing boat shall be as follows:

(a) The federal document number (all vessels five registered net tons and over);

(b) The state vessel registration number (all vessels not having a federal document number).

(4) Licensed commercial fishing boats which are federally documented shall have the document identification number displayed on each side of the boat adjacent to the current year license decal in not less than 3-inch high block numbers either placed on the boat or on an identification plate attached to the boat.

(5) Licensed commercial fishing boats which are state registered shall have their identification number displayed on each side of the bow as required by the appropriate laws or rules for displaying such number.

(6) Except as authorized by OAR 635-006-0132 or for fishers having a current Oregon Wholesale Fish Dealer license and Fish Buyer license, it is *unlawful* to transfer or sell commercially caught food fish, shellfish, or parts thereof, from a commercial fishing vessel to other than an Oregon Wholesale Fish Dealer or Fish Bait Dealer.

(7) As a license condition, owners or operators of commercial fishing vessels must cooperate with Department or Federal fishery observers, or observers collecting data for the Department or Federal agency, when asked, by the Department, to carry and accommodate an observer on fishing trips at no charge to the sponsoring agency.

(a) If observer coverage of a trip is denied by the owner or operator of a vessel, the Department shall require an explanation in writing from the owner or operator. This explanation shall be received by the Department within 15 days of written request by the Department for an explanation.

(b) The Department may request that the Commission revoke fishing permits or licenses for failure to cooperate in the observer program, after first allowing the owner or operator to meet with the Manager of the Marine Resources Program, or their representative, to provide an explanation for the denial.

(c) The Department shall not require the vessel operator or owner to provide an observer with meals or a subsistence allowance on observed fishing trips, but the vessel operator shall accommodate the observer with regard to reasonable eating and working conditions and access to pertinent fishing information and fishery data while aboard the vessel.

(d) Failure to provide reasonable eating and working conditions or access to pertinent fishing information or fishery data to observers, or actions taken by a vessel owner or operator against an observer that is prohibited pursuant to subsection (e), on observed fishing trips may lead to revocation of the vessel's fishing permits or licenses following the procedure outlined in subsection (b) above.

(e) To ensure that observer objectives may be reasonably and safely achieved, consistent with federal groundfish observer rules, it is *unlawful* for any person to:

(A) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer;

(B) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of any catch before sampling;

(C) Tamper with, destroy or discard an observer's collected samples, equipment, or personal gear, without the express consent of the observer;

(D) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer collecting samples, making observations, or otherwise performing the observers duties;

(E) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile or offensive environment; or

(F) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.025 & 508.035

Stats. Implemented: ORS 506.109, 506.129, 506.306, 508.025, 508.035 and 508.260

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 26, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0060, Renumbered from 635-036-0540; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0150

Single Delivery License

(1) The Single Delivery License is issued in accordance with ORS 508.035 for a one-time landing of food fish in a 12 month period, and is in

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lieu of the commercial fishing and boat license described in OAR 635-006-0140 and 635-006-0145. Where “commercial fishing license” is used in ORS 508.235 and “boat license” is used in 508.260, this license may be substituted.

(2) In the absence of a commercial fishing and boat license, it is *unlawful* to engage in the taking or landing of food fish in waters of this state without a single delivery license.

(3) No food fish shall be removed from a boat requiring a Single Delivery License until the fee for such license is received and such license has been issued by an authorized agent of the Department. The license shall be on board the boat and available for inspection by the Oregon State Police or a representative of the Department whenever food fish are being unloaded.

(4) Single delivery licenses shall be forfeited upon landing to the wholesale fish dealer, who shall attach the license document to the appropriate Fish Receiving Ticket. Vessels taking fish outside of state waters may substitute the license fee at the time of landing for the license document.

(5) Vessels operating under a Single Delivery License must comply with OAR 635-006-0140(7), when requested by the Department.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.025, 508.035, 508.235 & 508.260
Stats. Implemented: ORS 506.109, 506.129, 506.306, 508.025, 508.035, 508.235 & 508.260
Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-040-0085, Renumbered from 635-036-0550; FWC 81-1985, f. 12-16-85, ef. 1-1-86; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0160

Bait Fishing License

(1) A bait fishing license may be issued in accordance with ORS 508.312 of the commercial fishing laws and is required for any individual taking or assisting in the taking of food fish or shellfish for sale to a fish bait dealer or for use as bait in a commercial fishing operation. It is *unlawful* to take any food fish or shellfish under this license for human consumption purposes.

(2) For the purposes authorized under section (1), a bait fishing license serves in lieu of the commercial fishing and boat licenses required under ORS 508.235 and 508.260. This license is not required for individuals already possessing a valid commercial fishing license pursuant to 508.235, provided the vessel they are operating possesses a valid commercial boat license pursuant to 508.260.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.119, 506.129, 506.306 & 508.312
Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-040-0095, Renumbered from 635-036-0560; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0165

Commercial Fisher Transportation Report

(1) It is *unlawful* for any commercial fisher or any other person to transport food fish or shellfish in this state without first preparing and having in possession a written transportation report, invoice, or memorandum. The transportation report, invoice, or memorandum shall include the following:

(a) Date;

(b) Name and address of person from whom food fish or shellfish were received. If being transported by a commercial fisher or received from a commercial fisher, including his or her commercial fishing license number;

(c) Name and address of the Oregon licensed Wholesale Fish Dealer or Oregon licensed Fish Bait Dealer where the food fish or shellfish are being delivered;

(d) The number of each species of food fish or shellfish, their weight or estimated weight in pounds.

(2) Notwithstanding OAR 635-006-0210(2), the food fish or shellfish shall be transported within 48 hours to an Oregon licensed Wholesale Fish Dealer or Oregon licensed Fish Bait Dealer and reported on a Fish Receiving Ticket within 48 hours of arriving in port.

(3) The transportation report, invoice, or memorandum shall be prepared prior to any food fish or shellfish being removed from the boat of original taking or prior to transporting away from the point of initial landing. For clams, the report shall be prepared prior to leaving the beach or clam digging area. For food fish or shellfish transported into Oregon from another state, the report shall be prepared prior to entering the State of Oregon. A bill of lading or freight bill required for common carriers is acceptable in lieu of a transportation report.

(4) The transportation report, invoice, or memorandum shall be retained by the commercial fisher or person transporting the food fish including shellfish for a period of six months and is subject to inspection by

the Director, the Director’s authorized agent, or by the Oregon State Police at any time during that period.

(5) This section does not apply to retail fish dealers, retail bait fish dealers, wholesale fish dealers, food fish canners, shellfish canners, and wholesale fish bait dealers when required to keep records in accordance with OAR 635-006-0205 and ORS 508.535.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306, 508.535
Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-040-0100, Renumbered from 635-036-0565; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0205

Required Reports

(1) Every licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, and shellfish canner shall report all food fish or shellfish received from commercial fishers or commercial bait fishers authorized to land his or her catch in Oregon or received from a fish dealer from another state in which no tax or fee is levied and collected on the food fish or shellfish.

(2) As used in these regulations, any licensed wholesale fish dealer, fish buying station, fish buyer, bait dealer or canner whose licensed premises includes a receiving or docking facility for unloading the catch from a commercial fishing vessel shall be considered as the receiver and purchaser and shall have the responsibility for weighing the catch, reporting, and paying landing fees on such catch. The aforementioned premises shall only be licensed by one wholesale dealer, fish buying station, fish buyer, bait dealer or canner at one given time, except as provided in section (3) of this rule.

(3) Notwithstanding section (2) of this rule, upon receipt and approval by the Department of a Memorandum of Understanding in a form provided by the Department and signed by both parties, a licensed wholesale fish dealer or canner (identified as primary dealer) whose licensed premises includes a receiving or docking facility for unloading the catch from a commercial fishing vessel may act as an agent for another licensed wholesale fish dealer or canner (identified as secondary dealer).

(a) Through the Memorandum of Understanding the primary dealer agrees:

(A) To unload fish or shellfish products at their licensed receiving or buying dock from fishing vessels who are providing catch to the secondary dealer as per prior agreement and arrangement with the secondary dealer;

(B) To confirm that the landing is legal and the species are legal;

(C) To accurately report on Fish Receiving Tickets, assigned to the secondary dealer by the Department, all landing information in accordance with OAR 635-006-0210, with the exception of price;

(D) To obtain fisher signature on the Fish Receiving Ticket reporting such catch or if necessary, a dock ticket for Dungeness crab or net-caught groundfish in accordance with OAR 635-006-0211;

(E) To, upon transfer of the landed product from the primary dealer to the secondary dealer, provide the Fish Receiving Ticket record of the landing to the secondary dealer; and

(F) To retain a record of the required landing information of such catches.

(b) In addition through the Memorandum of Understanding, the secondary dealer agrees:

(A) To obtain the appropriate buyer’s license;

(B) To complete the Fish Receiving Ticket that reports the transferred product landed at the receiving or buying dock of the primary dealer, by adding the species ex-vessel price;

(C) To submit copies to the Department in accordance with OAR 635-006-0210(2); and

(D) To submit to the Department a monthly remittance report and accompanying landing fees in accordance with OAR 635-006-0215.

(c) The Department may withdraw its approval of any Memorandum of Understanding effective seven calendar days from postmark of written notice, based on the failure to abide by any of the terms of the Memorandum of Understanding or violation of any provision of this rule. If the Department withdraws its approval, then section (2) of this rule shall be applicable.

(4) Two basic reports required for reporting the commercial catch of food fish and shellfish and the payment of landing fees due on such catch are:

(a) The State of Oregon Fish Receiving Ticket; and

(b) The Fish Dealer Monthly Remittance Report. These reports shall be submitted on forms supplied or approved by the Department and completed in accordance with OAR 635-006-0210 and 635-006-0215.

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(5) For pink shrimp unloaded at a receiving or docking facility of a wholesale fish dealer or shellfish canner, the following shall apply:

(a) All pink shrimp shall be weighed and the net weight (pounds of raw shrimp landed) recorded on a Fish Receiving Ticket before being removed from the receiving facility and prior to processing;

(b) Notwithstanding subsection (5)(a) of this rule, a minimum sampling method or equivalent method may be used to estimate the net weight provided such method is approved and authorized in writing by the Department;

(c) Those wholesale fish dealers or cannery authorized to use the sampling procedure in subsection (5)(b) of this rule are subject to inspection for accuracy by the Department or by the Oregon State Police, at any time. Authorization for use of a sampling procedure may be withdrawn if, in the judgment of the Department, the procedure employed is likely to be inaccurate.

(6) All commercial fishers landing Dungeness crab must report the area of primary catch to the dealer at the time of landing. The dealer is responsible for recording this information on the Fish Receiving Ticket.

(7) For wholesale fish bait dealers landing less than 5,000 pounds daily of species defined in OAR 635-004-0220(3)(b)(C) and 635-004-0220(3)(b)(D), the following shall apply:

(a) Wholesale fish bait dealers may request the Department allow an estimate of the net weight of fish caught on a Fish Receiving Ticket.

(b) The Department may issue a written approval of requests made under subsection (6)(a) of this rule if the permittee uses a minimum sampling method or equivalent method to estimate the net weight, provided such method is acceptable to the Department.

(c) Those wholesale fish bait dealers authorized to use a sampling procedure approved under subsection (6)(b) of this rule are subject to inspection for accuracy by the Department or by the Oregon State Police, at any time. Authorization for use of a sampling procedure may be withdrawn if, in the judgment of the Department, the procedure employed is likely to be inaccurate.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 508.530

Stats. Implemented: ORS 506.109, 506.129 & 508.535

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0130, Renumbered from 635-036-0575; FWC 15-1981, f. 4-24-81, ef. 5-1-81; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 78-1993, f. & cert. ef. 12-6-93; FWC 23-1996, f. & cert. ef. 5-10-96; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0207

Limited Fish Seller Required Reports

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0205.

(2) Every licensed Limited Fish Seller shall report all food fish or shellfish sold directly to consumers. Prior to making any sales of food fish or shellfish, Limited Fish Sellers shall notify the Department, by such means as the Department prescribes, the estimated number of food fish on board the boat and the location where the sale is to take place.

(3) Two reports required for reporting the commercial sale and the payment of landing fees due on such catch are:

(a) The State of Oregon Fish Receiving Ticket; and

(b) The Fish Dealer Monthly Remittance Report. These reports shall be submitted on forms supplied or approved by the Department and completed in accordance with OAR 635-006-0210 and 635-006-0215. In addition, a sequentially numbered receipt for each individual sale shall be issued to the purchaser at time of purchase, and to the fisher if fish are to be kept for take home use. This receipt shall include the date, species, weight in pounds, price, number of fish or shellfish, and vessel name. A copy shall be retained on the vessel for a period of six months and available for three years and is subject to inspection by the Oregon State Police or authorized Department employee.

Stat. Auth.: ORS 506.109, 506.119, 506.129 & ORS 802

Stats. Implemented: ORS 506.109, 506.119, 506.129 & ORS 802

Hist.: FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-92, cert. ef. 1-1-92; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0209

Sorting Required

(1) It is *unlawful* to fail to sort into the categories listed in sections (2) and (3) of this rule, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, quota, harvest guideline, harvest cap, size limit, scientific sorting designation, Optimum Yield (OY) or Annual Catch Limit (ACL).

(2) Federal sorting requirements must be met for the following sectors:

(a) Trawl fisheries pursuant to 660.130(d), subpart D of the Code of Federal Regulations;

(b) Limited Entry Fixed Gear groundfish fisheries pursuant to 660.230(c), subpart E of the Code of Federal Regulations; and

(c) Open Access Fixed Gear groundfish fisheries pursuant to 660.330(c), subpart F of the Code of Federal Regulations.

(3) Nearshore species must be sorted into the following categories:

(a) Black rockfish;

(b) Black and Yellow rockfish;

(c) Blue rockfish;

(d) Brown rockfish;

(e) Cabezon;

(f) Calico rockfish;

(g) China rockfish;

(h) Copper rockfish;

(i) Gopher rockfish;

(j) Grass rockfish;

(k) Greenling;

(l) Kelp rockfish;

(m) Olive rockfish;

(n) Quillback rockfish;

(o) Tiger rockfish;

(p) Treefish; and

(q) Vermilion rockfish.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.129 & 506.306

Hist.: DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0210

Fish Receiving Ticket — All Fish

(1) Except as provided in OAR 635-006-0211, for each purchase of food fish or shellfish by a licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, or shellfish canner from a commercial fisher or commercial bait fisher, the dealer or canner shall prepare at the time of landing a Fish Receiving Ticket, or a separate document in lieu of a Fish Receiving Ticket provided the original dock ticket is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW. Fish dealers shall be required to account for all Fish Receiving Tickets received from the Department. Fish Receiving Tickets shall be issued in numerical sequence.

(2) Fish Receiving Tickets shall include the following:

(a) Fish dealer's name and license number, including the buying station and location if the food fish or shellfish were received at any location other than the licensed premises of the fish dealer;

(b) Date of landing;

(c) His or her name from whom purchase is made. If not landed from a vessel, then his or her commercial license number shall be added. If received from a Columbia River treaty Indian, his or her tribal affiliation and enrollment number as shown on the official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government, shall be used in lieu of an address or commercial fishing license;

(d) Boat name, boat license number, and federal document or State Marine Board number from which catch made;

(e) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;

(f) Fishing gear used by the fisher;

(g) For salmon and Dungeness crab, zone or area of primary catch;

(h) Species or species group, as defined in OAR 635-006-0209, of food fish or shellfish received;

(i) Pounds of each species or species group, as defined in OAR 635-006-0209, received;

(A) Pounds must be determined and reported based on condition of the fish when landed, either dressed or round. Dressed pounds may only be used for species with a conversion factor listed at OAR 635-006-0215(3)(g). Measures must be taken using a certified scale.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value. The following species or species groups are exempt from fish ticket requirements when considered "weighbacks":

(i) Sponges;

(ii) Sea Pens;

(iii) Sea Whips;

(iv) Black Corals;

(v) Sea Fans;

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- (vi) Anemone;
- (vii) Jellyfish;
- (viii) Whelks;
- (ix) Squids other than Humboldt and market;
- (x) Octopus other than Pacific giant octopus;
- (xi) Mysids;
- (xii) Shrimps other than pink shrimp, coonstripe prawns, and spot prawns;
- (xiii) Crabs other than Dungeness, tanner, box, Oregon hair, and red rock crabs;
- (xiv) Sea Stars including Brittle Stars;
- (xv) Urchins;
- (xvi) Sand dollars;
- (xvii) Sea cucumbers;
- (xviii) Eels other than hagfish;
- (xix) Blacksmelts;
- (xx) Spookfish;
- (xxi) Stomiformes including Viperfish and Blackdragons;
- (xxii) Slickheads;
- (xxiii) Flatnoses;
- (xxiv) Lancetfishes;
- (xxv) Barricudinas;
- (xxvi) Myctophids;
- (xxvii) Tomcod;
- (xxviii) Eelpouts including Bigfin, Two line, Black, and Snakehead;
- (xxix) Dreamers;
- (xxx) Anglerfish;
- (xxxi) King of the Salmon;
- (xxxii) Melamphids;
- (xxxiii) Whalefish;
- (xxxiv) Oxeye oreo;
- (xxxv) Sculpins other than cabezon, buffalo sculpin, red Irish lord, and brown Irish lord;
- (xxxvi) Poachers;
- (xxxvii) Snailfish;
- (xxxviii) Pricklebacks;
- (xxxix) Gunnels;
- (xl) Scabbardfish;
- (xli) Lancetfish;
- (xlii) Ragfish;
- (xliii) Slender sole;
- (xliv) Deepsea sole;
- (xlv) Rays including Pacific and electric Rays and Devilfish;
- (xlvii) Wolffishes including wolf eels.

- (j) For Columbia River sturgeon the exact number of fish received and the actual round weight of that number of fish;
- (k) Price paid per pound for each species received;
- (l) Signature of the individual preparing the Fish Receiving Ticket;
- (m) Signature of the fisher making the landing;
- (n) Species name, pounds and value of fish retained by fisher for take home use.

(3) Except as provided in OAR 635-006-0212 and 635-006-0213, the original of each Fish Receiving Ticket covering food fish and shellfish received shall be forwarded within five working days of the date of landing to the Oregon Department of Fish and Wildlife, 3406 Cherry Avenue, NE, Salem, OR 97303 or through the Pacific States Marine Fisheries Commission West Coast E-Ticket system or as required by Title 50 of the Code of Federal Regulations, part 660 Subpart C. All fish dealer amendments must be conducted in the same system in which the ticket was initially submitted.

(4) Wholesale fish bait dealers landing small quantities of food fish or shellfish may request authorization to combine multiple landings on one Fish Receiving Ticket and to deviate from the time in which Fish Receiving Tickets are due to the Department. Such request shall be in writing, and written authorization from the Department shall be received by the wholesale fish bait dealer before any such deviations may occur.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.036, 506.109, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0135, Renumbered from 635-036-0580; FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-91; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 16-1995(Temp), f. & cert. ef. 2-16-95; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; DFW 10-2004, f. & cert. ef. 2-13-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0211

Fish Receiving Ticket – Dungeness crab and Net Caught Groundfish

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) For net-caught groundfish, at time of landing the following information may be recorded on a separate document in lieu of a Fish Receiving Ticket provided this original document (dock ticket) is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW:

- (a) Date of landing.
- (b) Boat name and federal document or State Marine Board number from which catch was made.
- (c) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip.
- (d) Pounds of fish by species:
 - (A) Pounds must be determined based on condition of the fish when landed, either dressed or round. Dressed pounds may only be used for species with a conversion factor listed at OAR 635-006-0215(3)(g). Measures must be taken using a certified scale.

(B) Pounds shall include “weighbacks” by species. “Weighbacks” are those fish or shellfish with no commercial value. Species or species groups defined in 635-006-0210(2)(i)(B) are exempt from fish ticket requirements when considered “weighbacks.”

(e) Signature of the fisher delivering the catch.

(3) For Dungeness crab, at time of landing the following may be recorded on a separate document in lieu of a Fish Receiving Ticket, provided this original document (landing receipt) is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW:

- (a) Fish dealer’s name and dealer license number;
- (b) Date of landing;
- (c) Name of fisher from whom the food fish were purchased;
- (d) Vessel name, vessel license number, and the federal document or State Marine Board number of the vessel from which catch was made;
- (e) Port name of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;
- (f) Fishing gear used by the fisher;
- (g) Gross pounds of food fish received and price paid per pound; and
- (h) Signature of both the fisher making the landing and the individual preparing the landing receipt.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0212

Fish Receiving Ticket — Salmon

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) Fish receiving tickets shall be completed at time of landing and the original copy forwarded within four consecutive days following the landing to the Oregon Department of Fish and Wildlife.

(3) For troll-caught salmon, fish receiving tickets shall show the number of days fished during the trip in which the salmon were caught.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 44-2006(Temp), f. & cert. ef. 6-19-06 thru 12-15-06; Administrative correction 12-16-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; Administrative correction 1-23-09; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0213

Fish Receiving Ticket — Limited Fish Seller Permit

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) For food fish or shellfish sold under a Limited Fish Seller Permit, the Limited Fish Seller shall complete daily entries of fish sold on a Fish Receiving Ticket. Fish Receiving Tickets are prenumbered in books of 50 tickets. Limited Fish Sellers shall account for all Fish Receiving Tickets received from the Department. Fish Receiving Tickets shall be issued in

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numerical sequence. The Fish Receiving Ticket shall include, for each day's sales:

- (a) Limited Fish Seller's name and license number;
 - (b) Date of sales;
 - (c) Boat name and federal document or State Marine Board number from which catch made;
 - (d) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;
 - (e) Fishing gear used;
 - (f) Species or species group of fish or shellfish sold;
 - (g) Quantity in pounds;
 - (h) Price received per pound;
 - (i) Signature of the individual preparing the fish ticket;
 - (j) Name of wholesale fish dealer to whom other food fish or shellfish were sold from the same fishing trip.
- (k) For troll-caught salmon, Fish Receiving Ticket shall show the number of days fished during the trip in which the salmon were caught.
- (3) The original of each Fish Receiving Ticket covering fish and shellfish sold per trip shall be forwarded within ten working days following the landing to the Department.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530, 508.535 & 508.550
Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550
Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0215

Monthly Remittance Report

- (1) A monthly report is required of all licensed:
- (a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishers or bait fishers;
 - (b) Limited Fish Sellers selling food fish or shellfish.
- (2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.
- (3) The following information shall be included on the report:
- (a) Fish dealer's name, license number, and address;
 - (b) Calendar month of the report;
 - (c) Serial numbers of all Fish Receiving Tickets issued during the month;
 - (d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;
 - (e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;
 - (f) Total value of all other food fish and shellfish including eggs and parts;
 - (g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. When landed in a dressed condition, the following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying each applicable below-listed factor by the dressed weight of that species:

- (A) Troll salmon:
 - (i) Gilled and gutted 1.15
 - (ii) Gilled, gutted, and headed 1.30
- (B) Halibut:
 - (i) Gilled and gutted 1.15
 - (ii) Gilled, gutted, and headed 1.35
- (C) Sablefish, gutted and headed 1.60
- (D) Pacific whiting:
 - (i) Fillet 2.86
 - (ii) Headed and gutted 1.56
- (E) Thresher shark 2.0
- (F) Lingcod:
 - (i) Gilled and gutted 1.1
 - (ii) Gilled, gutted and headed 1.5
- (G) Spot prawn, tails 2.24
- (H) Groundfish, glazed:

(i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-006-0209 when there are 60 or greater individuals of a category in a single landing as follows:

- (I) Weigh a sample of at least 20 glazed fish to obtain the glazed weight;

- (II) Completely remove glaze from individual fish making up the sample;
- (III) Re-weigh the sample to obtain the non-glazed weight;
- (IV) Divide the non-glazed weight by the glazed weight to obtain the conversion factor;
- (V) A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade;
- (VI) Documentation of this calculation must be retained with the dock receiving ticket.

(ii) A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group categorized in OAR 635-006-0209 in a single landing.

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

- (A) All salmon and steelhead, 3.15 percent;
- (B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5.00 percent.

(C) Effective January 1, 2010, all other food fish (except tuna, as defined by ORS 508.505), 2.25 percent.

(D) All tuna (as defined by ORS 508.505), 1.09 percent.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 508.530
Stats. Implemented: ORS 506.109, 506.129, 508.535, 508.505 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp), f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0225

Purchase, Record, Report, and Sale of Steelhead Trout and Walleye from Treaty Indian Fisheries

(1) Steelhead trout and walleye lawfully taken by treaty Indians during commercial fishing seasons may be purchased by licensed wholesale fish dealers, canners, or buyers pursuant to restrictions set forth in sections (2) through (5) of this rule. In addition, steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased and/or possessed by any individual pursuant to restrictions set forth in section (6) of this rule.

(2) The wholesale fish dealer, canner, or buyer, shall at the time of purchase, enter the purchase of steelhead trout and walleye on a Department Columbia River Fish Receiving Ticket. Information required to be entered on the Fish Receiving Ticket shall be the same as required by OAR 635-006-0210 through 635-006-0212 for each purchase of food fish.

(3) The record keeping and reporting requirements for food fish as set forth in OAR 635-006-0200 through 635-006-0215 shall apply to all steelhead trout and walleye purchases.

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead trout and walleye shall be maintained by licensed wholesale fish dealers, canners, or buyers for a period of three years and shall be subject to inspection by the Department, the Director's authorized agent or the Oregon State Police. Such record of sales shall include as a minimum:

- (a) Name and address of each person to whom either steelhead or walleye are sold;

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(b) Quantity in pounds of each sale identified as whole or round weight or dressed weight;

(c) Date of each delivery.

(5) It is *unlawful* for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish in Oregon except to another wholesale fish dealer, canner, or buyer.

(6) Steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased from a treaty Indian and/or possessed by any individual so long as said fish are accompanied by a written document listing treaty Indian taker's name, tribal enrollment number, number of fish, approximate weight of each fish, date and location where taken, date of sale, and purchaser's name. It is *unlawful* for any individual other than a treaty Indian to sell steelhead trout or walleye. The provisions in this section (6) apply to individuals other than licensed wholesale fish dealers, cannery and buyers.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 508.530 & 509.031

Stats. Implemented: ORS 498.022, 506.109, 506.129, 508.535 & 508.550

Hist.: FWC 39, f. & ef. 1-23-76, Renumbered from 625-040-0150, Renumbered from 635-036-0595; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; FWC 51-1997(Temp), f. & cert. ef. 8-27-97; DFW 73-1998, f. & cert. ef. 8-28-98; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; Administrative correction 12-23-09; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0235

Revocation of and Refusal to Issue Commercial Fishing and Fish Dealer Licenses

(1) Except as provided in section (2) of this rule in accordance with ORS 508.485 and ORS 508.490, upon the third conviction or third forfeiture of bail within three years for violation of any of the Commercial Fishing Laws of the State of Oregon or for conviction in the State of Washington of an offense which was a violation of Columbia River Commercial fishing rules adopted pursuant to the Columbia River Compact, by any person, the Commission shall initiate contested case proceedings in accordance with the Administrative Procedures Act (ORS Chapter 183) to revoke, or refuse to issue, licenses issued under the Commercial Fishing Laws (ORS Chapters 506-513).

(2) Convictions or forfeiture of bail for exceeding trip limits in the groundfish trawl fishery, where the trip limit has not been exceeded by more than 15%, shall not be considered as a conviction or forfeiture of bail for purposes of section (1) of this rule.

(3) The Commission shall appoint a hearings officer to conduct the contested case hearing prescribed in section (1) of this rule.

(4)(a) In addition to the hearings officer, the Commission may appoint a three-member License Revocation Board to be present at the hearing and to make advisory recommendations to the Commission concerning revocation or refusal to issue a license to that person. License Revocation Boards shall consist of members representing the following fishing industries:

- (A) Troll salmon;
- (B) Gillnet salmon;
- (C) Groundfish and shrimp;
- (D) Crab;
- (E) All other commercial fisheries.

(b) Only members from the appropriate License Revocation Board shall participate in hearings related to their subject area. The hearings officer shall notify the appropriate License Revocation Board of the date, time and place of the hearing, and shall provide any other public notice required by ORS Chapter 183;

(c) At the hearing, the License Revocation Board may request the hearings officer call additional witnesses or seek additional evidence;

(d) At the conclusion of the hearing, the License Revocation Board shall prepare written recommendations concerning the disposition of the case, which the License Revocation Board shall serve on all parties and forward to the Commission.

(5) A proposed order in the form prescribed by OAR 137-003-0070, including findings of fact and conclusions of law, shall be prepared by the hearings officer, served on all parties, and shall be forwarded to the Commission.

(6) In accordance with ORS Chapter 183, the Commission shall provide an opportunity to all parties to respond in writing within a period set by the Commission to the proposed order of the hearings officer and to the written recommendations submitted by the License Revocation Board.

(7) In deciding whether to revoke or refuse to issue a license, the Commission shall consider:

(a) The recommendation of the License Revocation Board;

(b) The gravity of the most recent offense, including whether the offense was a felony and whether the offense involved a closed season, closed area, or unlawful gear;

(c) The gravity of the other commercial fishing offenses of which the person has been convicted or forfeited bail;

(d) The impact of the offense on the fisheries resources of the state or, where relevant, on the State of Washington, including consideration of the species involved;

(e) Whether the person also has been convicted of or forfeited bail for violations of the Wildlife laws of the State of Oregon.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.485, 508.490 & 183

Stats. Implemented: ORS 506.109, 506.129, 508.485 & 508.490

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 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0405

Definitions

For the purpose of OAR 635-006-0400 through 635-006-0425:

(1) "Buy-back" means the purchase by the Department of a current permit during the program.

(2) "Current" means either a 1984 permit for which the permitted vessel qualifies for renewal in 1985 or a 1985 permit.

(3) "License" means a boat license issued in accordance with ORS 508.035 and ORS 508.260.

(4) "Offer price" means the dollar amount at which a permit holder offers to sell the permit to the Department.

(5) "Permit" means a current Columbia River gillnet salmon vessel permit, issued pursuant to Chapter 679, Oregon Laws 1979.

(6) "Permit holder" means an individual who has been issued and possesses a current permit.

(7) "Program" means the Oregon Columbia River gillnet salmon fleet reduction program.

(8) "Vessel" means a commercial fishing vessel.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 506.241

Stats. Implemented: ORS 506.109, 506.129 & 506.241

Hist.: FWC 7-1982, f. & ef. 1-29-82; FWC 77-1982, f. & ef. 10-29-82; FWC 68-1983, f. & ef. 12-16-83; FWC 63-1984, f. & ef. 9-21-84; FWC 56-1986(Temp), f. & ef. 9-11-86; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-0425

Purchase of Permits

Permits shall first be purchased from Category A. Permits shall be purchased from Category B only after purchases approved by the Commission from Category A are selected.

(1) Permits shall be purchased beginning with the lowest offer price.

(2) Each subsequent permit purchase shall be made at the lowest remaining offer price.

(3) In case of ties in otherwise qualified permit holders' offer prices, the Department will first purchase the permit of the permit holder with the greatest total pounds of salmon lawfully landed in Oregon from the Columbia River gillnet salmon fishery for the period 1978 through 1985.

(4) Any offer over \$1,000.00 shall be referred to the Commission for approval.

(5)(a) Permits which are purchased shall be retired by the Department;

(b) The transfer of the offered permit is effective upon written acceptance by the Department.

(6) The Department shall purchase no more than one permit from each applicant.

(7) The Department shall indicate on all application forms a deadline date after which no more program applications and offers to sell permits shall be accepted.

(8) Any offer to sell a permit at the offer price selected by the applicant shall constitute a formal offer to sell the permit to the Department and shall not be withdrawn until 120 days after the deadline date specified on the application form provided by the Department.

(9) In determining the total salmon landings of an applicant, the Department may consider as evidence:

(a) Department records;

(b) Such information as the Department considers reliable evidence of the landings;

(c) An affidavit submitted by the permit holder concerning the quantity of salmon lawfully landed.

(10) In determining program eligibility the Department may consider as evidence:

(a) Department records;

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(b) Such information as the Department considers reliable evidence of eligibility;

(c) An affidavit submitted by the permit holder concerning his or her eligibility.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 506.241

Stats. Implemented: ORS 506.109, 506.129 & 506.241

Hist.: FWC 7-1982, f. & ef. 1-29-82; FWC 77-1982, f. & ef. 10-29-82; FWC 1-1984, f. & ef. 1-10-84; FWC 68-1983, f. & ef. 12-16-83; FWC 63-1984, f. & ef. 9-21-84; FWC 56-1986(Temp), f. & ef. 9-11-86; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1005

Introduction to Organization

(1) In 2012, many commercial fishing regulations were reorganized, with significant parts of the Restricted Participation Systems regulations moved to their related fishery sections in division 4 and division 5 of the Fish & Wildlife Oregon Administrative Rules. As a result of the reorganization, only regulations regarding commercial gillnet and troll salmon fisheries remain in the Restricted Participation Systems section. These two fisheries are organized by topic. For each topic, the applicable law for each fishery is either set forth or, where the statute provides detail, the statute is cited.

(2) The topics covered by these rules are:

(a) Requirement for permit — 635-006-1015;

(b) Permit Fee — 635-006-1025;

(c) Eligibility Requirements for a Permit — 635-006-1035;

(d) Evidence of Eligibility - 635-006-1050;

(e) Revocation and Refusal to Issue Permits — 635-006-1060;

(f) Review of Denials — 635-006-1065;

(g) Renewal of Permit — 635-006-1075;

(h) Lottery for Certain Limited Entry Fisheries — 635-006-1085;

(i) Transferability of Permits — 635-006-1095;

(j) Commercial Fishery Permit Boards — 635-006-1200;

(k) Agency Representation by Employee — 635-006-1210.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1015

Requirement for Permit

(1) The following provide general requirements for permits:

(a) Gillnet salmon — see ORS 508.775;

(b) Troll salmon — see ORS 508.801 and 508.828;

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

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

Stats. Implemented: ORS 506.109 & 506.129

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 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 114-2007, f. & cert. ef. 10-25-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1025

Permit Fee

The annual fee to participate in limited entry fisheries is as follows:

(1) Gillnet salmon:

(a) The annual fee is \$100.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.790, ORS 508.775 and Section 6, Chapter 512, Oregon Laws 1989.

(b) A fee of \$100.00 shall be charged for each transfer of participation rights under this section.

(2) Troll salmon:

(a) The annual fee is \$100.00 (plus a \$2.00 license agent fee) for resident applicants and \$290.00 (plus a \$2.00 license agent fee) for non-resident applicants. See ORS 508.816, ORS 508.822 and Section 6, Chapter 512, Oregon Laws 1989.

(b) A fee of \$100.00 shall be charged for each transfer of participation rights under this section.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 146-2011, f. & cert. ef. 10-14-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

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.

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

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; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1060

Revocation and Refusal to Issue Permits

The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of limited entry fisheries permits as follows:

(1) Gillnet salmon permit — see ORS 508.787.

(2) Troll salmon permit — see ORS 508.813.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 76-1995, f. 9-13-95, cert. ef. 9-19-95; 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 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1065

Review of Denials (Restricted Participation Systems)

(1) An individual whose application for issuance or renewal of a limited entry permit is denied by the Oregon Department of Fish and Wildlife (Department) may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board (Board). The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$125.00 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Oregon Fish and Wildlife Commission (Commission), but may be appealed as provided in ORS 183.480 to 183.550.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 126-2009, f. & cert. ef. 10-7-09; DFW 154-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 5-28-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1075

Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon — Permits may be renewed by submission to the Department of a \$100.00 fee (plus a \$2.00 license agent fee) for resident applicants and \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application, see ORS 508.781 and 508.790;

(b) Troll salmon — Permits may be renewed by submission to the Department of a \$100.00 fee (plus a \$2.00 license agent fee) for resident applicants and \$290.00 fee (plus a \$2.00 license agent fee) for non-resident applicants and a complete application, see ORS 508.807 and 508.816;

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the

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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 December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that 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.

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

Stats. Implemented: ORS 506.109 & 506.129

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 92-1998, f. & cert. ef. 11-25-98; 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 23-2006, f. & cert. ef. 4-21-06; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 86-2007(Temp), f. & cert. ef. 9-10-07 thru 9-17-07; Administrative correction 10-16-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 155-2010(Temp), f. 11-22-10, cert. ef. 11-23-10 thru 5-21-11; Administrative correction 6-28-11; DFW 146-2011, f. & cert. ef. 10-14-11; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1085

Lottery for Certain Limited Entry Fisheries

(1) 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;

(2) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(3) 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.

(4) Only one application per vessel may be submitted for each permit fishery lottery.

(5) 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 March 31 of the year for which the permit is issued.

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

Stats. Implemented: ORS 506.109 & 506.129

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. 7-12-04 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; DFW 17-2009(Temp), f. 2-25-09, cert. ef. 2-26-09 thru 8-24-09; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 146-2011, f. & cert. ef. 10-14-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1095

Transferability of Permits

Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of limited entry fishery permits:

(1) Gillnet salmon — see ORS 508.793.

(2) Troll salmon — see ORS 508.822.

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

Stats. Implemented: ORS 506.109, 506.129, 508.760 & 508.762

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 94-1998, f. & cert. ef. 11-25-98; 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 95-2006(Temp), f. & cert. ef. 9-8-06 thru 11-24-06; Administrative correction 12-16-06; DFW 23-2007(Temp), f. 4-9-07, cert. ef. 4-17-07 thru 10-13-07; Administrative correction 10-16-07; DFW 114-2007, f. & cert. ef. 10-25-07; DFW 162-2010(Temp), f. & cert. ef. 12-15-10 thru 6-12-11; Administrative correction 6-28-11; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1200

Commercial Fishery Permit Boards

See ORS 508.920. In addition:

(1) The members of the Boards established by ORS 508.920 shall:

(a) Be members in good standing within their community;

(b) Serve staggered three-year terms. The term of a Board member shall end three years from the date the Commission confirms an individual as a Board member. An individual shall not serve more than two consecutive terms as a Board member;

(c) Serve at the pleasure of the Commission and may be removed if in the judgment of the Commission, the Board member is no longer qualified to serve including, but not limited to, a conviction for violation of fish and wildlife laws, or inappropriate conduct during the course of Permit Board proceedings.

(2) Members representing the commercial fisheries described in ORS 508.920 shall maintain a valid permit or license for the fishery they represent. If such permit or license becomes invalid for any reason, the term of the individual on the Permit Board terminates on the date the permit or license expires.

(3) When issues are pending before the Commercial Fisheries Permit Boards, the Boards shall meet not less frequently than once every calendar quarter to make disposition of such issues.

(4) The Department shall provide an Administrative Hearings Officer to assist the Commercial Fisheries Permit Board in developing the record and preparing the Boards' Opinion and Order. The Administrative Hearings Officer shall exhibit through references and experience a thorough understanding of the Administrative Procedures Act.

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

Stats. Implemented: ORS 506.129 & 508.755

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

635-006-1210

Agency Representation by Employee

(1) An officer or employee of the agency, designated by the Director, with the written consent of the Attorney General pursuant to ORS 183.452 is authorized to represent the department in contested case hearings.

(2) An agency representative acting under the provisions of this section shall not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized in subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an agency representative appears under the provision of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

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

Stats. Implemented: ORS 183.452

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 2-2002, f. & cert. ef. 1-3-02; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12

Rule Caption: Federal In-season Actions and Management Measures Adopted for Groundfish Fisheries.

Adm. Order No.: DFW 78-2012(Temp)

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 7-1-12 thru 10-27-12

Notice Publication Date:

Rules Amended: 635-004-0275

Rules Suspended: 635-004-0019(T)

Subject: This amended rule adopts in-season actions previously adopted by the federal government for 2012 Pacific ocean commercial groundfish fisheries, including but not limited to: (1) Changes to limited entry and open access sablefish DTL fishery trip limits; and (2) Changes in the trawl rockfish conservation area (RCA).

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0275

Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2011 ed.);

(b) Federal Register Vol. 76, No. 43, dated May 11, 2011 (76 FR 27508);

(c) Federal Register Vol. 76, No. 231, dated December 1, 2011 (76 FR 74725);

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(d) Federal Register Vol. 76, No. 239, dated December 13, 2011 (76 FR 77415);

(e) Federal Register Vol. 76, No. 245, dated December 21, 2011 (76 FR 79122);

(f) Federal Register Vol. 77, No. 74, dated April 17, 2012 (77 FR 22679); and

(g) Federal Register Vol. 77, No. 80, dated April 25, 2012 (77 FR 24635).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where federal 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**.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

(4) Notwithstanding, the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol. 76, No. 245/Wednesday, December 21, 2011, announced inseason actions and management measures effective January 1, 2012, including but not limited to: (a) changes in the trawl rockfish conservation area (RCA); and (b) changes to limited entry and open access sablefish DTL fishery trip limits.

(5) Notwithstanding, the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol. 77, No. 74/Tuesday, April 17, 2012, announced inseason actions and management measures effective May 1, 2012, including but not limited to changes in the trawl rockfish conservation area (RCA).

(6) Notwithstanding, the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol. 77, No. 80/Wednesday, April 25, 2012, announces inseason actions and management measures effective May 1, 2012, including but not limited to reduced trip limits for limited entry fixed gear North of 36° N. latitude.

[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, 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12

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, Subparts C, D, E and F (October 1, 2011 ed.).

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subparts C, D, E and F (October 1, 2011 ed.), 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 defined in OAR 635-004-0019, the National Marine Fisheries Service, by means of Federal Register/Vol. 76, No. 245/Wednesday, December 21, 2011, announced inseason actions and management measures effective January 1, 2012, including but not limited to: (a) changes in the trawl rockfish conservation area (RCA) and (b) changes to limited entry and open access sablefish DTL fishery trip limits.

(4) Notwithstanding, the regulations defined in OAR 635-004-0019, the National Marine Fisheries Service, by means of Federal Register/Vol. 77, No. 74/Tuesday, April 17, 2012, announced inseason actions and management measures effective May 1, 2012, including but not limited to: changes in the trawl rockfish conservation area (RCA).

(5) Notwithstanding, the regulations defined in OAR 635-004-0019, the National Marine Fisheries Service, by means of Federal Register/Vol. 77, No. 80/Wednesday, April 25, 2012, announces inseason actions and management measures effective May 1, 2012, including but not limited to: reduced trip limits for limited entry fixed gear North of 36° N. latitude.

[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(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 59-2010(Temp), f. & cert. ef. 5-12-10 thru 11-7-10; DFW 109-2010(Temp), f. & cert. ef. 7-30-10 thru 11-30-10; DFW 122-2010(Temp), f. & cert. ef. 8-25-10 thru 11-30-10; DFW 138-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 160-2010(Temp), f. & cert. ef. 12-7-10 thru 12-31-10; DFW 167-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 1-31-11; DFW 2-2011(Temp), f. & cert. ef. 1-11-11 thru 7-9-11; DFW 20-2011(Temp), f. & cert. ef. 3-3-11 thru 8-29-11; DFW 47-2011(Temp), f. & cert. ef. 5-13-11 thru 11-8-11; DFW 73-2011(Temp), f. & cert. ef. 6-20-11 thru 11-8-11; DFW 86-2011(Temp), f. 7-6-11, cert. ef. 7-7-11 thru 12-31-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 40-2012(Temp), f. 4-24-12, cert. ef. 5-1-12 thru 10-27-12; DFW 43-2012(Temp), f. 4-26-12, cert. ef. 5-1-12 thru 10-27-12; Suspended by DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12

Rule Caption: Increased Cumulative Trip Limits for Black and Blue Rockfish Combined in Periods 3 and 4.

Adm. Order No.: DFW 79-2012(Temp)

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 7-1-12 thru 12-27-12

Notice Publication Date:

Rules Amended: 635-004-0355

Subject: This amended rule increases the nearshore commercial fishery cumulative trip limits for black rockfish and blue rockfish combined by 400 pounds, from 1,400 to 1,800 pounds, in each of periods 3 and 4.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0355

Trip Limits

(1) The trip limits outlined in this rule are set at the beginning of each calendar year based on commercial harvest caps and projected fishing effort, and are subject to in-season adjustments and closures. Fishers should refer to Nearshore Commercial Fishery Industry Notices on the Marine Resources Program Commercial Fishing Rules and Regulations webpage for the most up-to-date information regarding trip limits and other regulations affecting the Nearshore Commercial Fishery.

(2) For black and blue rockfish combined, vessels with a Black Rockfish / Blue Rockfish / Nearshore Fishery Permit, with or without a Nearshore Endorsement, may land no more than the following cumulative trip limits:

- (a) 800 pounds in period 1;
- (b) 1,000 pounds in period 2;
- (c) 1,800 pounds in each of periods 3 and 4;
- (d) 1,000 pounds in period 5; and
- (e) 800 pounds in period 6.

(3) For all other nearshore species, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit with Nearshore Endorsement may land no more than the following cumulative trip limits in each period:

- (a) 700 pounds of other nearshore rockfish combined;
- (b) 1,500 pounds of cabezon; and
- (c) 250 pounds of greenling species.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 79-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 12-27-12

Rule Caption: Tillamook Bay Commercial Cockle Clam Dive Fishery Closes.

Adm. Order No.: DFW 80-2012(Temp)

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 7-4-12 thru 12-30-12

Notice Publication Date:

Rules Amended: 635-005-0355

Subject: Amended rule closes the Tillamook Bay commercial cockle clam dive fishery at 12:01 a.m. Wednesday, July 4, 2012 due to a projected attainment of the 90,000 pound annual harvest quota allowed under bay clam dive permits. Modifications are consistent

ADMINISTRATIVE RULES

with requirements described in OAR 635-005-0355 sections (2) and (3).

Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0355

Catch Limits

(1) In Netarts Bay, the commercial landing cap for cockle clams harvested by the bay clam dive fishery is 8,000 pounds.

(2) In Tillamook Bay, the commercial landing cap for cockle clams harvested by the bay clam dive fishery is 90,000 pounds.

(3)(a) When the commercial cockle clam landing caps specified in sections (1) and (2) of this rule are reached, the commercial cockle clam fishery in that estuary will close for the remainder of that calendar year.

(b) The Tillamook Bay clam dive fishery is closed effective 12:01 a.m. Wednesday, July 4 due to the anticipated attainment of the 90,000 pound landing cap.

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

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06, Renumbered from 635-005-0032, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 80-2012(Temp), f. 6-28-12, cert. ef. 7-4-12 thru 12-30-12

Rule Caption: Columbia River Treaty Indian Commercial Gill Net Salmon Season Extended.

Adm. Order No.: DFW 81-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-3-12 thru 8-31-12

Notice Publication Date:

Rules Amended: 635-041-0076

Rules Suspended: 635-041-0076(T)

Subject: Rule modifications set two gill net fishing periods in Zone 6 of the Columbia River and allow the sales of fish caught during those periods. Revisions are consistent with action taken June 28, 2012 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0076

Summer Salmon Season

(1) Commercial sales of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River are allowed until further notice.

(a) Chinook, steelhead, sockeye, coho, walleye, shad, carp, bass, catfish and yellow perch landed during an open commercial fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets and rod and reel with hook-and-line are allowed.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(2) Commercial sales of gill net caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Tuesday, July 3 through 6:00 p.m. Friday, July 6, 2012 (3.5 days); and from 6:00 a.m. Monday, July 9 through 6:00 p.m. Wednesday, July 11, 2012 (2.5 days).

(a) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open gill net fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence purposes.

(b) Gear is restricted to gill nets. No minimum mesh size restriction is in effect.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake; Icicle Creek, and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods and concurrent with periods when sales from Zone 6 platform and hook-and-line fisheries are allowed.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 94-2011(Temp), f. 7-14-11, cert. ef. 7-18-11 thru 10-31-11; DFW 98-2011(Temp), f. 7-20-11, cert. ef. 7-25-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 66-2012(Temp), f. 6-14-12, cert. ef. 6-18-12 thru 7-31-12; DFW 81-2012(Temp), f. 6-29-12, cert. ef. 7-3-12 thru 8-31-12

Rule Caption: White Sturgeon Retention In Youngs Bay Select Area Commercial Gillnet Fishery Closes.

Adm. Order No.: DFW 82-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-2-12 thru 7-31-12

Notice Publication Date:

Rules Amended: 635-042-0145

Rules Suspended: 635-042-0145(T)

Subject: Rule amendments close the commercial gillnet fishery in the Youngs Bay Select Area of the Columbia River to the retention of white sturgeon begin at 6:00 p.m. Monday, July 2, 2012. Modifications are consistent with the action taken June 28, 2012 by the State of Oregon.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(1) Salmon and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The 2012 open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season: Entire Youngs Bay: Sundays, Tuesdays and Thursdays from February 12 through March 9 (12 days) starting at 12:00 noon through 6:00 a.m. the following morning (18 hours). Also, 6:00 p.m. until midnight Sunday March 11 (6 hours), 10:00 p.m. Thursday March 15 until 4:00 a.m. Friday March 16 (6 hours), 3:00 p.m. until 7:00 p.m. Sunday March 18 (4 hours), 5:00 p.m. until 9:00 p.m. Wednesday March 21 (4 hours); 8:00 a.m. until noon Sunday March 25 (4 hours); 10:00 a.m. until 2:00 p.m. Thursday March 29 (4 hours); 1:00 p.m. until 5:00 p.m. Sunday April 1 (4 hours); and 4:00 p.m. until 8:00 p.m. Thursday April 5 (4 hours).

(B) Spring Season: Entire Youngs Bay: 4:00 p.m. to 9:00 p.m. Thursday, April 19 (5 hours); 6:00 p.m. Tuesday April 24 to 6:00 a.m. Wednesday April 25 (12 hours); 6:00 p.m. Thursday April 26 to 6:00 a.m. Friday April 27 (12 hours); Sundays, Tuesdays, and Thursdays from 6:00 p.m. until noon the following day (18 hours) beginning Sunday, April 29 through Friday, May 11 and Mondays at noon through Fridays at noon (4 days), beginning Monday, May 14 through Friday, June 15 (20 days total).

(C) Summer Season: Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday June 20 through Friday July 27 (12 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are: From February 12 through April 5 and from April 19 through July 27, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

ADMINISTRATIVE RULES

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter season. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(c) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) White sturgeon may not be possessed or sold by participating vessels during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in subsections (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-

2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 24-2009(Temp), f. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; DFW 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; DFW 30-2010(Temp), f. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; DFW 35-2010(Temp), f. 3-23-10, cert. ef. 3-24-10 thru 7-31-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 35-2011(Temp), f. & cert. ef. 4-28-11 thru 7-29-11; DFW 46-2011(Temp), f. & cert. ef. 5-12-11 thru 7-29-11; DFW 52-2011(Temp), f. & cert. ef. 5-18-11 thru 7-29-11; DFW 76-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-29-11; DFW 106-2011(Temp), f. 8-2-11, cert. ef. 8-3-11 thru 10-31-11; DFW 121-2011(Temp), f. 8-29-11, cert. ef. 9-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 24-2012(Temp), f. 3-15-12, cert. ef. 3-18-12 thru 7-31-12; DFW 26-2012(Temp), f. 3-20-12, cert. ef. 3-21-12 thru 7-31-12; DFW 27-2012(Temp), f. 3-27-12, cert. ef. 3-29-12 thru 7-31-12; DFW 28-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-31-12; DFW 30-2012(Temp), f. 4-4-12, cert. ef. 4-5-12 thru 7-31-12; DFW 36-2012(Temp), f. 4-16-12, cert. ef. 4-19-12 thru 7-31-12; DFW 82-2012(Temp), f. 6-29-12, cert. ef. 7-2-12 thru 7-31-12

Rule Caption: Allow Commercial Sales of Dressed Salmon and Steelhead by Columbia River Treaty Tribal Fishers.

Adm. Order No.: DFW 83-2012(Temp)

Filed with Sec. of State: 7-5-2012

Certified to be Effective: 7-5-12 thru 12-31-12

Notice Publication Date:

Rules Amended: 635-006-0212, 635-006-0215, 635-006-0225

Subject: These amended rules allow commercial sales of gilled and gutted Columbia River salmon and steelhead caught by Treaty tribal members to wholesale fish dealers, cannery, and buyers. Amendments also require wholesale fish dealers, cannery, and buyers to report in round weights on the Fish Receiving Ticket using a conversion factor 1.15.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0212

Fish Receiving Ticket — Salmon

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) Fish receiving tickets shall be completed at time of landing and the original copy forwarded within four consecutive days following the landing to the Oregon Department of Fish and Wildlife.

(3) For troll-caught salmon, fish receiving tickets shall show the number of days fished during the trip in which the salmon were caught.

(4) It is lawful for licensed wholesale fish dealers, cannery, or buyers to purchase from tribal fishers, referred to in OAR 635-041-0005, gilled and gutted Columbia River salmon lawfully taken by treaty Indians during commercial fishing seasons. The licensed wholesale dealer must submit round weights on the Fish Receiving Ticket by multiplying the weights of gilled and gutted salmon by the conversion factor listed in OAR 635-006-0215 for tribal Columbia River salmon and steelhead.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 44-2006(Temp), f. & cert. ef. 6-19-06 thru 12-15-06; Administrative correction 12-16-06; DFW 79-2008(Temp), f. & cert. ef. 7-10-08 thru 12-31-08; Administrative correction 1-23-09; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish cannery, or shellfish cannery receiving food fish or shellfish from licensed commercial fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

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(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. When landed in a dressed condition, the following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying each applicable below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted 1.15

(ii) Gilled, gutted, and headed 1.30

(B) Tribal Columbia River salmon and steelhead trout: Gilled and gutted 1.15

(C) Halibut:

(i) Gilled and gutted 1.15

(ii) Gilled, gutted, and headed 1.35

(D) Sablefish, gutted and headed 1.60

(E) Pacific whiting:

(i) Fillet 2.86

(ii) Headed and gutted 1.56

(F) Thresher shark 2.0

(G) Lingcod:

(i) Gilled and gutted 1.1

(ii) Gilled, gutted and headed 1.5

(H) Spot prawn, tails 2.24

(I) Groundfish, glazed:

(i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-006-0209 when there are 60 or greater individuals of a category in a single landing as follows:

(I) Weigh a sample of at least 20 glazed fish to obtain the glazed weight;

(II) Completely remove glaze from individual fish making up the sample;

(III) Re-weigh the sample to obtain the non-glazed weight;

(IV) Divide the non-glazed weight by the glazed weight to obtain the conversion factor;

(V) A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade;

(VI) Documentation of this calculation must be retained with the dock receiving ticket.

(ii) A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group categorized in OAR 635-006-0209 in a single landing.

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5.00 percent.

(C) Effective January 1, 2010, all other food fish (except tuna, as defined by ORS 508.505), 2.25 percent.

(D) All tuna (as defined by ORS 508.505), 1.09 percent.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 508.530

Stats. Implemented: ORS 506.109, 506.129, 508.535, 508.505 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-

10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12

635-006-0225

Purchase, Record, Report, and Sale of Steelhead Trout and Walleye from Treaty Indian Fisheries

(1) Steelhead trout and walleye lawfully taken by treaty Indians during commercial fishing seasons may be purchased by licensed wholesale fish dealers, canners, or buyers pursuant to restrictions set forth in sections (2) through (5) of this rule. In addition, steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased and/or possessed by any individual pursuant to restrictions set forth in section (6) of this rule.

(2) The wholesale fish dealer, canner, or buyer, shall at the time of purchase, enter the purchase of steelhead trout and walleye on a Department Columbia River Fish Receiving Ticket. Information required to be entered on the Fish Receiving Ticket shall be the same as required by OAR 635-006-0210 through 635-006-0212 for each purchase of food fish.

(3) The record keeping and reporting requirements for food fish as set forth in OAR 635-006-0200 through 635-006-0215 shall apply to all steelhead trout and walleye purchases. The round weights of all gilled and gutted steelhead trout must be converted by the licensed wholesale fish dealer, canner, or buyer by using the conversion factor listed in 635-006-0215 for Tribal Columbia River salmon and steelhead trout.

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead trout and walleye shall be maintained by licensed wholesale fish dealers, canners, or buyers for a period of three years and shall be subject to inspection by the Department, the Director's authorized agent or the Oregon State Police. Such record of sales shall include as a minimum:

(a) Name and address of each person to whom either steelhead or walleye are sold;

(b) Quantity in pounds of each sale identified as whole or round weight;

(c) Date of each delivery.

(5) It is *unlawful* for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish in Oregon except to another wholesale fish dealer, canner, or buyer.

(6) Steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased from a treaty Indian and/or possessed by any individual so long as said fish are accompanied by a written document listing treaty Indian taker's name, tribal enrollment number, number of fish, approximate weight of each fish, date and location where taken, date of sale, and purchaser's name. It is *unlawful* for any individual other than a treaty Indian to sell steelhead trout or walleye. The provisions in this section apply to individuals other than licensed wholesale fish dealers, canners and buyers.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 508.530 & 509.031

Stats. Implemented: ORS 498.022, 506.109, 506.129, 508.535 & 508.550

Hist.: FWC 39, f. & ef. 1-23-76, Renumbered from 625-040-0150, Renumbered from 635-036-0595; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; FWC 51-1997(Temp), f. & cert. ef. 8-27-97; DFW 73-1998, f. & cert. ef. 8-28-98; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; Administrative correction 12-23-09; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12

Rule Caption: Spring Pacific Ocean Sport Halibut All-Depth Season Closure from Cape Falcon to Humbug Mountain.

Adm. Order No.: DFW 84-2012(Temp)

Filed with Sec. of State: 7-5-2012

Certified to be Effective: 7-5-12 thru 8-2-12

Notice Publication Date:

Rules Amended: 635-039-0085

ADMINISTRATIVE RULES

Subject: Amended rule closes the all-depth spring sport fishery for Pacific halibut in the area between Cape Falcon and Humbug Mountain, Oregon at 11:59 p.m. on Thursday, July 5 due to the projected attainment of the pre-season quota of 120,821 pounds on June 30, 2012. This rule is consistent with regulations previously implemented by the federal government and the International Pacific Halibut Commission for the 2012 Oregon sport fishery for Pacific halibut.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-039-0085

Halibut Seasons

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 39 incorporates into Oregon Administrative Rules, by reference:

(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2012 ed.), as amended; and

(b) Federal Register Vol. 77, No. 56, dated March 22, 2012 (77FR 16740).

(2) Therefore, persons must consult all publications referenced in this rule in addition to division 39 to determine applicable halibut fishing seasons.

(3) Effective 11:59 p.m., Thursday, July 5, 2012 the Central Oregon Coast Subarea (Cape Falcon to Humbug Mountain) spring all-depth season is closed to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative 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; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 58-2011(Temp), f. 5-27-11, cert. ef. 6-4-11 thru 8-4-11; DFW 82-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 8-4-11; DFW 85-2011(Temp), f. 7-5-11, cert. ef. 7-6-11 thru 10-31-11; DFW 114-2011(Temp), f. & cert. ef. 8-12-11 thru 10-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 84-2012(Temp), f. & cert. ef. 7-5-12 thru 8-2-12

Rule Caption: 2012 Columbia River Summer Recreational Salmon Fisheries Modified.

Adm. Order No.: DFW 85-2012(Temp)

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 7-9-12 thru 8-31-12

Notice Publication Date:

Rules Amended: 635-023-0128

Rules Suspended: 635-023-0125(T), 635-023-0128(T)

Subject: This amended rule modifies the summer recreational salmon fishing seasons in the Columbia River. Modifications close the area from Bonneville Dam upstream to the Highway 395 Bridge in Pasco, Washington to retention of sockeye salmon due to the projected attainment of the harvest guideline for this fishery as allowed under the ESA and U.S. v OR Management Agreement.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The 2012 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 2012 Oregon Sport Fishing Regulations.

(2) The Columbia River is open from January 1 through February 29 and May 26 through May 27 from the mouth at Buoy 10 upstream to Beacon Rock with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead 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 adult adipose fin-clipped steelhead in combination, but only one may be a Chinook, may be retained per day. Catch limits for jacks remain in effect as per the 2012 Oregon Sport Fishing Regulations.

(3) Effective through June 15, 2012, in Oregon and Washington Select Areas the hatchery adult Chinook daily bag limit will be the same as the adjacent mainstem Columbia River when the mainstem is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult retention, the salmon daily limit will revert to permanent rules.

(4) Effective May 16 through July 31, 2012, only single-point hooks are allowed when angling at Cascade Locks in the area between the boat ramp at the lower end of the locks upstream to the east (upstream) end of the lock wall.

(5) Retention of sockeye salmon is allowed:

(a) May 16 through June 15 from a line projected from Rocky Point on the Washington shore through red buoy #44 to the navigation light at Tongue Point upstream to the I-5 Bridge;

(b) June 16 through July 1 from Astoria-Megler Bridge upstream to Bonneville Dam;

(c) June 16 through July 31 from Bonneville Dam upstream to the OR/WA border; and

(d) All sockeye salmon count as an adult salmonid in the daily limit regardless of size.

(6) The Columbia River is open May 19 and May 20 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to the Oregon/Washington border; plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines.

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead 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 adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the 2012 Oregon Sport Fishing Regulations.

(7) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to the Oregon/Washington border effective through June 15 it is *unlawful* when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-

ADMINISTRATIVE RULES

21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12; DFW 31-2012(Temp), f. 4-5-12, cert. ef. 4-6-12 thru 6-15-12; DFW 33-2012(Temp), f. 4-12-12, cert. ef. 4-14-12 thru 6-15-12; DFW 45-2012(Temp), f. 5-1-12, cert. ef. 5-2-12 thru 7-31-12; DFW 47-2012(Temp), f. 5-15-12, cert. ef. 5-16-12 thru 7-31-12; DFW 49-2012(Temp), f. 5-18-12, cert. ef. 5-19-12 thru 7-31-12; DFW 51-2012(Temp), f. 5-23-12, cert. ef. 5-26-12 thru 7-31-12; Suspended by DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12

635-023-0128

Summer Sport Fishery

(1) The **2012 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 **2012 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2012 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through July 1 the mainstem Columbia River is open to the retention of adipose fin-clipped jack Chinook, adipose fin-clipped adult Chinook and sockeye salmon from the Astoria-Megler Bridge upstream to the Bonneville Dam.

(b) Effective June 15 through July 31 the mainstem Columbia River is open to the retention of adipose fin-clipped adult Chinook salmon from Bonneville Dam upstream to the Oregon/Washington border.

(c) Effective June 15 through July 8 the mainstem Columbia River is open to the retention of sockeye salmon from Bonneville Dam upstream to the Oregon/Washington border.

(d) The combined daily bag limit for adult salmon and steelhead is two fish. Only adipose fin-clipped Chinook and steelhead may be retained. All sockeye salmon count as an adult salmonid in the daily limit regardless of size.

(3) Effective through July 31, 2012, only single-point hooks are allowed when angling at Cascade Locks in the area between the boat ramp at the lower end of the locks upstream to the east (upstream) end of the lock wall.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12

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Rule Caption: Sport Chinook Fisheries on the Willowa River Close.

Adm. Order No.: DFW 86-2012(Temp)

Filed with Sec. of State: 7-10-2012

Certified to be Effective: 7-15-12 thru 9-1-12

Notice Publication Date:

Rules Amended: 635-019-0090

Rules Suspended: 635-019-0090(T)

Subject: This amended rule closes the recreational spring Chinook fishery on the Willowa River effective 11:59 p.m. Sunday, July 15, 2012.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2012 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 **2012 Oregon Sport Fishing Regulations**.

(2) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is open to angling for adipose

fin-clipped adult Chinook salmon from 12:01 a.m. Friday, June 22 through 11:59 p.m. Monday, June 25, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) During the duration of the spring Chinook angling season, the area closure listed for Lookingglass Creek in the Northeast Zone *Special Regulations* is modified to: Lookingglass Creek closed between Jarboe Creek and 200 feet upstream of the hatchery water intake.

(c) Hook gap restrictions listed in the Northeast Zone *Special Regulations* for Lookingglass Creek are removed for the duration of the spring Chinook angling season.

(d) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

(3) Catherine Creek from the Miller Lane Bridge to the Highway 203 Bridge, located upstream of Catherine Creek State Park, is open to angling for adipose fin-clipped adult Chinook salmon from May 26 through June 30, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

(4) The Imaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until June 27, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

(5) The Willowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 9 until July 15, 2012.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2012 Oregon Sport Fishing Regulations**, remain in effect.

[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; 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 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10;

ADMINISTRATIVE RULES

DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 86-2012(Temp), f. 7-10-12, cert. ef. 7-15-12 thru 9-1-12

Rule Caption: Columbia River Mainstem Treaty Indian Summer Commercial Fisheries Close.

Adm. Order No.: DFW 87-2012(Temp)

Filed with Sec. of State: 7-11-2012

Certified to be Effective: 7-12-12 thru 8-31-12

Notice Publication Date:

Rules Amended: 635-041-0045, 635-041-0072, 635-041-0076

Rules Suspended: 635-041-0045(T), 635-041-0072(T), 635-041-0076(T)

Subject: Rule modifications close the Treaty tribal summer commercial fisheries in the Columbia River effective at 6:00 p.m. Thursday, July 12, 2012. Revisions are consistent with action taken July 11, 2012 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0045

Closed Commercial Fishing Areas

Unless otherwise specified in this rule and OAR 635-041-0063, the following waters are closed to commercial fishing:

(1) All Oregon tributaries of the Columbia River.

(2) The Columbia River westerly and downstream of the Bridge of the Gods except:

(a) Fisheries conducted by the Yakama, Warm Springs, Nez Perce and Umatilla tribes downstream of Bonneville Dam (bank fishing only) under provisions of the agreements with the states of Oregon and Washington are open until further notice.

(A) Effective 6:00 a.m. July 1, through 6:00 p.m. Thursday, July 12, 2012, commercial sales of Chinook, steelhead, sockeye, coho, walleye, shad, yellow perch, catfish, bass and carp are allowed. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. Fish may not be sold on USACE property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(B) Gear is restricted to subsistence fishing gear which includes hoopnets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line.

(C) Salmon, steelhead, walleye, shad, carp, bass, catfish and yellow perch landed during an open treaty commercial fishing period may be sold at any time.

(b) Platform and hook-and-line fisheries from the Bridge of the Gods downstream to the subsistence fishing deadline as described in OAR 635-041-0020(1) are open to commercial sales whenever sales are authorized for platform and hook-and-line fisheries in the remainder of Bonneville Pool.

(3) The Columbia River easterly and upstream of a line extending at a right angle across the thread of the river from a deadline marker one mile downstream of McNary Dam.

(4) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at the west end of 3-Mile Rapids located approximately 1.8 miles below The Dalles Dam, upstream to a line from a deadline marker on the Oregon shore located approximately 3/4 mile above The Dalles Dam east fishway exit, thence at a right angle to the thread of the river to a point in midriver, thence downstream to Light "1" on the Washington shore; except that dip nets, bag nets, and hoop nets are permitted during commercial salmon and shad fishing seasons at the Lone Pine Indian fishing site located immediately above The Dalles Interstate Bridge.

(5) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at Preachers Eddy light below the John Day Dam and a line approximately 4.3 miles upstream extending from a marker on the Oregon shore approximately one-half mile above the upper easterly bank of the mouth of the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriv-

er, thence turning downstream to a marker located on the Washington shore approximately opposite the mouth of the John Day River.

(6) The Columbia River within areas at and adjacent to the mouths of the Deschutes River and the Umatilla River. The closed areas are along the Oregon side of the Columbia River and extend out to the midstream from a point one-half mile above the intersection of the upper bank of the tributary with the Columbia River to a point one mile downstream from the intersection of the lower bank of the tributary with the Columbia River. All such points are posted with deadline markers.

(7) The Columbia River within an area and adjacent to the mouth of the Big White Salmon River. The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

(8) The Columbia River within an area at and adjacent to the mouth of Drano Lake (Little White Salmon River). The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upriver of the outlet of Drano Lake.

(9) The Columbia River within an area and adjacent to the mouth of the Wind River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

(10) The Columbia River within areas at and adjacent to the mouth of Hood River. The closed area is along the Oregon side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at end of the breakwall at the west end of the Port of Hood River and 1/2 mile upriver from the east bank.

(11) The Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway, except that during the period of August 25–September 20 inclusive the closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between a marker located 1-1/2 miles downriver of the Spring Creek Hatchery fishway up to the downstream marker of the Big White Salmon sanctuary located approximately 1/2 mile upriver of the Spring Creek Hatchery fishway.

(12) Herman Creek upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(13) The Columbia River within an area and adjacent to the mouth of the Klickitat River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1-1/8 miles downstream from the west bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 149(Temp), f. & ef. 9-21-77 thru 1-18-78; 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 635-035-0045; FWC 6-1980, f. & ef. 1-28-80; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 4-1984, f. & ef. 1-31-84; FWC 55-1985(Temp), f. & ef. 9-6-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 25-1986(Temp), f. & ef. 6-25-86; FWC 42-1986, f. & ef. 8-15-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 40-2011(Temp), f. & cert. ef. 5-5-11 thru 10-31-11; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 60-2011(Temp), f. 6-2-11, cert. ef. 6-6-11 thru 10-31-11; DFW 63-2011(Temp), f. 6-8-11, cert. ef. 6-9-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 119-2011(Temp), f. 8-26-11, cert. ef. 8-29-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; DFW 80-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 10-31-12; DFW 87-2012(Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12

635-041-0072

Carp, Shad and Other Nongame Fish

It is *unlawful* to fish for or possess carp, shad and other nongame fish from the Columbia River for commercial purposes except:

(1) As authorized by ORS 508.106 (Permit to take carp or other foodfish).

(2) During open commercial fishing periods with gear authorized for those open commercial fishing periods.

ADMINISTRATIVE RULES

(3) Commercial sales of shad are authorized for fish caught during the period from Thursday, June 21 through 6:00 p.m. Thursday, July 12, 2012.

(a) Fishing in all of Zone 6, except for outside Boat Restricted Zones at dams, is allowed. Only shad may be kept or sold. All other fish must be immediately returned to the water unharmed.

(b) Authorized gear types include: drift gill nets, fish wheels, purse seines and beach seines. Experimental gear types can only be used when commercial gill net seasons are closed.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 40-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 12-2-07; Administrative correction 12-20-07; DFW 68-2012(Temp), f. 6-20-12, cert. ef. 6-21-12 thru 7-31-12; DFW 87-2012(Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12

635-041-0076

Summer Salmon Season

(1) Commercial sales of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River are allowed for fish caught before 6:00 p.m. Thursday, July 12, 2012.

(a) Chinook, steelhead, sockeye, coho, walleye, shad, carp, bass, catfish and yellow perch landed during an open commercial fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets and rod and reel with hook-and-line are allowed.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(2) Commercial sales of gill net caught fish from Zone 6 of the mainstem Columbia River is allowed for fish caught from 6:00 a.m. Tuesday, July 3 through 6:00 p.m. Friday, July 6, 2012 (3.5 days); and from 6:00 a.m. Monday, July 9 through 6:00 p.m. Wednesday, July 11, 2012 (2.5 days).

(a) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open gill net fishing period may be sold at any time or retained for subsistence purposes. Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence purposes.

(b) Gear is restricted to gill nets. No minimum mesh size restriction is in effect.

(c) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake; Icicle Creek, and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods and concurrent with periods when sales from Zone 6 platform and hook-and-line fisheries are allowed except, effective 6:00 p.m. Thursday, July 12, 2012, sales of sockeye salmon are prohibited.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11,

cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 94-2011(Temp), f. 7-14-11, cert. ef. 7-18-11 thru 10-31-11; DFW 98-2011(Temp), f. 7-20-11, cert. ef. 7-25-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 66-2012(Temp), f. 6-14-12, cert. ef. 6-18-12 thru 7-31-12; DFW 87-2012(Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 3-2012

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 6-26-12

Notice Publication Date: 5-1-2012

Rules Adopted: 413-120-0457, 413-120-0475

Rules Amended: 413-120-0400, 413-120-0420, 413-120-0440, 413-120-0450, 413-120-0455, 413-120-0460

Rules Repealed: 413-120-0470

Subject: OAR 413-120-0400, 413-120-0420, 413-120-0440, 413-120-0450, 413-120-0455, and 413-120-0460 are being amended; OAR 413-120-0457 and 413-120-0475 are being adopted; and OAR 413-120-0470 is being repealed to update and clarify the criminal records check requirements for relative caregivers, foster parents, adoptive parents, and other persons in the household along with the processes that relate to these requirements. These rules are also being changed to more closely align the policies, requirements, and terminology in these rules with the criminal records policies, requirements, and terminology applied in other Department programs. These amendments also make permanent and further revise changes made by temporary rule effective December 28, 2011.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0400

Purpose

(1) These rules (OAR 413-120-0400 to 413-120-0475) describe the *criminal records check* requirements for those seeking to provide relative care, foster care, or *respite care* to children in the care or custody of the Department, be *approved* as adoptive resources for children in the custody of the Department, or be approved as an *other person in the household*.

(2) These rules set forth the criminal convictions which disqualify a subject individual from being a *relative caregiver*, *foster parent*, adoptive resource, or *other person in the household*.

(3) These rules outline the process by which the Department determines the fitness of a *subject individual* convicted of or arrested for certain felony and misdemeanor crimes to be a *relative caregiver*, *foster parent*, adoptive resource, or *other person in the household*.

(4) These rules must be used in conjunction with other applicable standards when determining a subject individual's fitness to provide relative care, foster care, or *respite care* for children in the care or custody of the Department, or to be *approved* as an *other person in the household*.

Stat. Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0420

Definitions

For purposes of these rules (OAR 413-120-0400 to 413-120-0475):

(1) "Authorized designee" means a Department employee who is designated and authorized by the Department to receive and process *criminal records check* request forms from subject individuals, receive criminal records information from the Background Check Unit, and make fitness determinations as described in these rules.

(2) "Battery" means the use of physical force to injure, damage, or abuse or to cause offensive physical contact.

(3) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a *child* or *young adult* in the care or custody of the Department.

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(4) "Child" means an individual under the age of 18.

(5) "Contested case hearing" means a hearing conducted under ORS Chapter 183 and applicable administrative rules.

(6) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of *other criminal records information* obtained from other sources.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of *other criminal records information*.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or *other criminal records information* sources located in, or regarding, a state or jurisdiction outside Oregon.

(7) "Department" means the Department of Human Services.

(8) "Fitness determination" means the decision made by an *authorized designee*, with regard to information obtained through a *criminal records check*, to either approve or deny a *subject individual* under these rules. A *subject individual* who is approved following a criminal records based fitness determination may still be denied approval to be a *relative caregiver*, *foster parent*, adoptive resource or an *other person in the household* if the *subject individual* does not meet other requirements contained in Department rules governing relative care, foster care, and adoption.

(9) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.

(10) "OSP" means the Oregon State Police.

(11) "Other criminal records information" means information obtained and used in the *criminal records check* process that is not criminal offender information from OSP. "Other criminal records information" includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the background check requests, disclosures by a *subject individual*, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a *fitness determination*.

(12) "Other person in the household" means any individual described in one or more of the following subsections:

(a) An individual 18 years of age or older, who is not in the care and custody of the Department pursuant to ORS 418.015, who is living in the home of:

(A) An applicant to adopt a *child* in the custody of the Department as described in Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption" (OAR 413-120-0190 to 413-120-0246); or

(B) An applicant to be a *foster parent*, *relative caregiver*, or adoptive resource as described in Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" (OAR 413-200-0301 to 413-200-0396).

(b) A *respite care* provider.

(c) A person who volunteers or is employed by a *foster parent* or *relative caregiver* to assist with the care of the children placed in the home.

(d) Any of the following individuals if there is reason to believe the individual may pose a risk to children placed in the home: A member of the household under 18 years of age, a babysitter, or a person who frequents the home.

(13) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related *child* or *young adult* who is placed in the home by the Department.

(14) "Respite care" means a formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of a *child* or *young adult* in the home of the respite provider or *certified family*. "Respite care" must be less than 14 consecutive days.

(15) "Subject individual" means an individual who:

(a) Applies to adopt a *child* in the custody of the Department as described in Child Welfare Policy I-G.1.3, "Adoption Applications,

Adoption Home Studies, and Standards for Adoption", OAR 413-120-0190 to 413-120-0246;

(b) Applies to be a *foster parent*, *relative caregiver*, or adoptive resource as described in Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0301 to 413-200-0396; or

(c) Is an *other person in the household*.

(16) "Violence" means the use of physical force to injure, damage, or abuse.

(17) "Weighing test" means the process in which an *authorized designee* considers available information to make a *fitness determination* when a *subject individual* has potentially disqualifying convictions, arrests, or conditions.

(18) "Young adult" means an individual aged 18 through 20 years.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 34-2011(Temp), f. 12-27-11, cert. ef. 12-28-11 thru 6-25-12; CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0440

Circumstances in which a Criminal Records Check Must Occur and Types of Records Checks Required

(1) Circumstances in which the Department conducts criminal records checks.

(a) When a family applies to be certified as a *relative caregiver* or *foster parent* under OAR 413-200-0270 to 413-200-0296, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.

(b) When a family applies to adopt a *child* under OAR 413-120-0190 to 413-120-0246, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.

(c) When a *subject individual* who has not previously been approved as an *other person in the household* of a *certified family* seeks approval to be an *other person in the household*, the Department must conduct a *criminal records check* on the *subject individual*. Notwithstanding this requirement, when a person who lives in the household turns 18 years of age during the time that a family is certified, or after a family has been approved as a potential adoptive resource, a *criminal records check* is not required on the person who turned 18 until the family is being evaluated for renewal of certification or until a previously approved adoption home study is being amended or updated.

(d) When a *certified family* is being assessed to determine whether or not the certification will be renewed under OAR 413-200-0287, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.

(e) When a previously approved home study is being amended or updated within the 12 months prior to an adoption placement selection as required by OAR 413-120-0246, the Department must conduct a *criminal records check* on each applicant and any person who is identified as an *other person in the household*.

(2) In addition to the required criminal records checks described in section (1) of this rule, the Department may conduct a *criminal records check* on any *subject individual* at any time, if deemed necessary by the Department to protect child safety.

(3) Each *criminal records check* conducted under section (1) of this rule must include a fingerprint-based check of records maintained by the Federal Bureau of Investigation (FBI) unless one of the following subsections applies:

(a) The *criminal records check* is being conducted for purposes of a certification renewal or an update to a previously approved home study as described in subsections (1)(d) and (1)(e) of this rule, and the *subject individual*:

(A) Has not lived outside of Oregon for more than 60 consecutive days after the subject individual's last *criminal records check*;

(B) Has not been arrested since the family was last certified to provide foster care or relative care or approved as a potential adoptive resource; and

(C) Previously had a fingerprint-based check of records maintained by FBI in order to be approved under these rules to live in the home that is being assessed for certification renewal.

(b) The *criminal records check* is being conducted for purposes of approval of a *subject individual* to provide *respite care*, and the *subject individual*:

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(A) Has not lived outside the state of Oregon for more than 60 consecutive days in the last five years;

(B) Does not disclose any history of arrests or convictions;

(C) Is not determined, following a review of the results of a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS), to have a history of arrests or convictions; and

(D) Is not determined, as a result of review of information received from any other source, to have a history of arrests or convictions.

(c) The *criminal records check* is being conducted for purposes of approval of a *subject individual* to be an *other person in the household*, and the *subject individual*:

(A) Is under the age of 18;

(B) Is a babysitter; or

(C) Frequents the home but is not a respite provider nor a care-giving employee or volunteer.

(d) The Department determines that the *subject individual* is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to the *subject individual* or staff, and the District Manager in the District where the *criminal records check* was initiated provides written approval to forego the fingerprint-based check. The District Manager's written approval, and written documentation of the circumstances that lead to the decision to forego fingerprinting, must be kept with other documents pertaining to the subject individual's *criminal records check*.

(4) Notwithstanding subsections (3)(a) to (3)(c) of this rule, the Department may require a fingerprint-based check of records maintained by FBI as part of the *criminal records check* for any *subject individual* if deemed necessary by the Department to protect child safety.

(5) Each *criminal records check* conducted under these rules must include a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS) regardless of whether a fingerprint-based check of records maintained by FBI is conducted or not.

(6) A *criminal records check* under this rule may also include a review of records obtained from other law enforcement entities, courts, or any other source of criminal information.

(7) A *subject individual* who is required under these rules (OAR 413-120-0400 to 413-120-0475) to undergo a fingerprint-based check of records maintained by FBI may be approved following a check of Oregon criminal records obtained from OSP's Law Enforcement Data System (LEDS). When an approved *subject individual* is subsequently determined to have arrests or convictions which were unknown at the time of their approval, the *subject individual* must be approved following a new *fitness determination* in order to continue to function in the capacity for which the *subject individual* was previously approved.

(a) The new *fitness determination* is required regardless of the severity of the previously unknown criminal history, the length of time since the arrests or convictions occurred, or any other factor pertaining to the history.

(b) The new *fitness determination* must occur as soon as possible after any new criminal history has been discovered, and no later than 14 working days after the history has been discovered.

(c) The new *fitness determination* must occur regardless of when previously unknown criminal history is discovered and regardless of whether the history is discovered as a result of information obtained from LEDS, the FBI, or any other credible information source.

(d) The same Department employee who made the original *fitness determination* must also make the new *fitness determination*, unless the severity of the newly discovered history requires approval at a higher level of the Department's organizational structure or unless the person who made the original determination is no longer in the position she or he occupied at that time or is otherwise unavailable.

(e) Following the discovery of previously unknown criminal history, and pending a new *fitness determination*, the Department may permit a *subject individual* to continue to function in the capacity for which the individual was previously approved. If the newly discovered history includes any convictions that require a *fitness determination* by the District Manager, or the Child Welfare Director or Chief Operating Officer, written approval from the District Manager must be obtained within 24 hours in order for the *subject individual* to continue in her or his current capacity pending the outcome of the new *fitness determination*.

(f) Notwithstanding subsections (a) to (c) of this section, when a *criminal records check* is being conducted for the purpose of approval of an adoptive resource or for the initial non-child-specific certification of a foster family, the *subject individual* must undergo both a check of Oregon criminal records obtained from OSP's Law Enforcement Data System

(LEDS) and a fingerprint-based check of records maintained by FBI before a *fitness determination* is made and before the *subject individual* may be approved.

(8) A *subject individual* who was previously approved as a respite provider or as an *other person in the household* must undergo a new *criminal records check* and *fitness determination*, including a fingerprint-based check of records maintained by FBI, when applying to adopt a *child* or to be a *foster parent* or *relative caregiver*.

(9) When a family currently certified as child-specific caregivers seeks to become a non-child-specific *certified family*, and the household includes a *subject individual* who was previously approved following a criminal records related *fitness determination*, written approval must be granted prior to the family becoming non-relative foster parents. In these circumstances, decisions regarding approval must be made by the Department employees involved in the original fitness determinations or by employees in positions at the same level of the Department's organizational structure.

(10) A *subject individual* may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0450

Disqualifying and Potentially Disqualifying Criminal Convictions

(1) The Department must determine the fitness of individuals who have been convicted of crimes, or who have been arrested for but not convicted for certain crimes, to be relative caregivers, foster parents, *respite care* providers, adoptive resources, or an *other person in the household*.

(2) An *authorized designee* employed by the Department must make all fitness determinations.

(3) A *subject individual* convicted of any crime described in subsections (a) to (h) of this section may not be a *relative caregiver*, *foster parent*, adoptive resource, or an *other person in the household* regardless of how long ago the *subject individual* was convicted or any other factors or circumstances that exist. An *authorized designee* making a *fitness determination* under these rules must deny any *subject individual* who has been convicted in Oregon or any other jurisdiction of a felony crime that involves:

(a) Violence, including rape, sexual assault, and homicide, but not including other physical assault or battery;

(b) Intentional starvation or torture;

(c) Abuse or neglect of a *child*;

(d) Spousal abuse;

(e) Aiding, abetting, attempting, soliciting, or conspiring to cause the death of a *child*;

(f) Sodomy or sexual abuse;

(g) A *child* as the victim (including child pornography); or

(h) The following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:

(A) ORS 162.155 - Escape in the second degree, if the crime involves *violence*;

(B) ORS 162.165 - Escape in the first degree, if the crime involves *violence*;

(C) ORS 162.325 - Hindering prosecution, if the crime involves *violence*;

(D) ORS 163.095 - Aggravated murder;

(E) ORS 163.115 - Murder;

(F) ORS 163.118 - Manslaughter in the first degree;

(G) ORS 163.125 - Manslaughter in the second degree;

(H) ORS 163.145 - Criminally negligent homicide;

(I) ORS 163.149 - Aggravated vehicular homicide;

(J) ORS 163.160 - Assault in the fourth degree, if classified as a felony, and the victim is a *child* or the subject individual's spouse;

(K) ORS 163.165 - Assault in the third degree if the victim is a *child* or the subject individual's spouse;

(L) ORS 163.175 - Assault in the second degree if the victim is a *child* or the subject individual's spouse;

(M) ORS 163.185 - Assault in the first degree if the victim is a *child* or the subject individual's spouse;

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(N) ORS 163.205 - Criminal mistreatment in the first degree if the victim is a *child* or the subject individual's spouse, or if the crime involves *violence*;

(O) ORS 163.207 - Female genital mutilation;

(P) ORS 163.213 - Unlawful use of an electrical stun gun, tear gas, or mace in the first degree;

(Q) ORS 163.225 - Kidnapping in the second degree if the victim is a *child* or the subject individual's spouse, or if the crime involves *violence*;

(R) ORS 163.235 - Kidnapping in the first degree if the victim is a *child* or the subject individual's spouse, or if the crime involves *violence*;

(S) ORS 163.245 - Custodial interference in the second degree if the victim is a *child*;

(T) ORS 163.257 - Custodial interference in the first degree if the victim is a *child*;

(U) ORS 163.355 - Rape in the third degree;

(V) ORS 163.365 - Rape in the second degree;

(W) ORS 163.375 - Rape in the first degree;

(X) ORS 163.385 - Sodomy in the third degree;

(Y) ORS 163.395 - Sodomy in the second degree;

(Z) ORS 163.405 - Sodomy in the first degree;

(AA) ORS 163.408 - Unlawful sexual penetration in the second degree;

(AB) ORS 163.411 - Unlawful sexual penetration in the first degree;

(AC) ORS 163.425 - Sexual abuse in the second degree;

(AD) ORS 163.427 - Sexual abuse in the first degree;

(AE) ORS 163.432 - Online sexual corruption of a *child* in the second degree;

(AF) ORS 163.433 - Online sexual corruption of a *child* in the first degree;

(AG) ORS 163.452 - Custodial sexual misconduct in the first degree;

(AH) ORS 163.479 - Unlawful contact with a *child*;

(AI) ORS 163.525 - Incest, if the victim of the offense is a *child*;

(AJ) ORS 163.535 - Abandonment of a child;

(AK) ORS 163.537 - Buying or selling a person under 18 years of age;

(AL) ORS 163.547 - Child neglect in the first degree;

(AM) ORS 163.555 - Criminal nonsupport;

(AN) ORS 163.670 - Using a child in display of sexually explicit conduct;

(AO) ORS 163.684 - Encouraging child sexual abuse in the first degree;

(AP) ORS 163.686 - Encouraging child sexual abuse in the second degree;

(AQ) ORS 163.688 - Possession of materials depicting sexually explicit conduct of a child in the first degree;

(AR) ORS 163.689 - Possession of materials depicting sexually explicit conduct of a child in the second degree;

(AS) ORS 164.125 - Theft of services, if the theft involves *violence* and is for services valued at \$750 or more;

(AT) ORS 164.225 - Burglary in the first degree if the crime involves *violence*;

(AU) ORS 164.395 - Robbery in the third degree if the crime involves *violence*;

(AV) ORS 164.405 - Robbery in the second degree if the crime involves *violence*;

(AW) ORS 164.415 - Robbery in the first degree if the crime involves *violence*;

(AX) ORS 166.015 - Riot if the crime involves *violence*;

(AY) ORS 166.165 - Intimidation in the first degree if the crime involves *violence*;

(AZ) ORS 166.220 - Unlawful use of a weapon if the crime involves *violence*;

(BA) ORS 167.017 - Compelling prostitution, if the victim is a *child* or the subject individual's spouse; or

(BB) ORS 167.057 - Luring a minor.

(4) An *authorized designee* making a *fitness determination* under these rules must deny any *subject individual* who has been convicted in Oregon or any other jurisdiction of a felony crime within the last five years preceding the date of the *fitness determination*, if the felony crime involves:

(a) Physical assault, battery;

(b) A drug-related offense; or

(c) Any of the following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:

(A) ORS 163.160 - Assault in the fourth degree, if classified as a felony.

(B) ORS 163.165 - Assault in the third degree.

(C) ORS 163.175 - Assault in the second degree.

(D) ORS 163.185 - Assault in the first degree if the crime involved *violence*.

(E) ORS 163.208 - Assaulting a public safety officer.

(F) ORS 167.212 - Tampering with drug records.

(G) ORS 167.262 - Adult using minor in commission of controlled substance offense, if classified as a felony.

(H) ORS 475.846 - Unlawful manufacture of heroin.

(I) ORS 475.848 - Unlawful manufacture of heroin within 1,000 feet of school.

(J) ORS 475.850 - Unlawful delivery of heroin.

(K) ORS 475.852 - Unlawful delivery of heroin within 1,000 feet of school.

(L) ORS 475.854 - Unlawful possession of heroin.

(M) ORS 475.856 - Unlawful manufacture of marijuana.

(N) ORS 475.858 - Unlawful manufacture of marijuana within 1,000 feet of school.

(O) ORS 475.860 - Unlawful delivery of marijuana, if classified as a felony.

(P) ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school.

(Q) ORS 475.864 - Unlawful possession of marijuana, if classified as a felony.

(R) ORS 475.866 - Unlawful manufacture of 3,4-methylenedioxyamphetamine.

(S) ORS 475.868 - Unlawful manufacture of 3,4-methylenedioxyamphetamine within 1,000 feet of school.

(T) ORS 475.870 - Unlawful delivery of 3,4-methylenedioxyamphetamine.

(U) ORS 475.872 - Unlawful delivery of 3,4-methylenedioxyamphetamine within 1,000 feet of school.

(V) ORS 475.874 - Unlawful possession of 3,4-methylenedioxyamphetamine.

(W) ORS 475.876 - Unlawful manufacture of cocaine.

(X) ORS 475.878 - Unlawful manufacture of cocaine within 1,000 feet of school.

(Y) ORS 475.880 - Unlawful delivery of cocaine.

(Z) ORS 475.882 - Unlawful delivery of cocaine within 1,000 feet of school.

(AA) ORS 475.884 - Unlawful possession of cocaine.

(AB) ORS 475.886 - Unlawful manufacture of methamphetamine.

(AC) ORS 475.888 - Unlawful manufacture of methamphetamine within 1,000 feet of school.

(AD) ORS 475.890 - Unlawful delivery of methamphetamine.

(AE) ORS 475.892 - Unlawful delivery of methamphetamine within 1,000 feet of school.

(AF) ORS 475.894 - Unlawful possession of methamphetamine.

(AG) ORS 475.904 - Unlawful manufacture or delivery of controlled substance within 1,000 feet of school.

(AH) ORS 475.908 - Causing another person to ingest a controlled substance.

(AI) ORS 475.910 - Application of controlled substance to the body of another person, if the controlled substance is in Schedule I, II, III, or IV.

(AJ) ORS 475.914 - Prohibited acts for registrants related to Schedule I controlled substances.

(AK) ORS 475.962 - Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance.

(AL) ORS 475.967 - Possession of precursor substance with intent to manufacture controlled substance.

(AM) ORS 475.977 - Possessing or disposing of methamphetamine manufacturing waste.

(5) In addition to any other requirements pertaining to fitness determinations:

(a) Any fitness determinations made with regard to crimes identified in subsection (b) of this section must adhere to the following requirements:

(A) Approval of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:

(i) The Department's Child Welfare Director; or

(ii) The Department's Child Welfare and Self Sufficiency Chief Operating Officer; or

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(iii) An Administrator or Manager who does not work in the district in which the *criminal records check* was initiated and who is designated by the Department's Child Welfare Director.

(B) Denial of any *subject individual* convicted of a crime identified in this section may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator.

(b) Crimes to which subsection (a) of this section applies are as follows:

(A) Any misdemeanor crime of *violence* against a *child*.

(B) Any felony involving *violence*, unless the offense meets the criteria under sections (3) or (4) of this rule.

(C) A felony drug-related offense, unless the offense meets the criteria under sections (3) or (4) of this rule.

(D) The following crimes under Oregon law or substantially similar crimes in Oregon or any other jurisdiction:

(i) ORS 162.155 - Escape in the second degree, if the crime involves the threatened use of *violence*. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(ii) ORS 162.165 - Escape in the first degree, if the crime involves the threatened use of *violence* or the threatened use of a dangerous or deadly weapon. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(iii) ORS 163.160 - Assault in the fourth degree, if the conviction is classified as a felony. (If the conviction occurred within five years before the *fitness determination* or if the victim was a *child*, the *subject individual* must be denied.)

(iv) ORS 163.160 - Assault in the fourth degree if the conviction is a misdemeanor and the victim is a *child*. (If the conviction is a felony and the victim is a *child*, the *subject individual* must be denied.)

(v) ORS 163.165 - Assault in the third degree. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)

(vi) ORS 163.175 - Assault in the second degree. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)

(vii) ORS 163.185 - Assault in the first degree. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)

(viii) ORS 164.395 - Robbery in the third degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(ix) ORS 164.405 - Robbery in the second degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(x) ORS 164.415 - Robbery in the first degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(xi) ORS 166.015 - Riot. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(xii) ORS 166.165 - Intimidation in the first degree. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(xiii) ORS 166.220 - Unlawful use of weapon. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(xiv) ORS 167.017 - Compelling prostitution. (If the conviction meets the criteria in section (3) of this rule, the *subject individual* must be denied.)

(xv) ORS 167.212 - Tampering with drug records. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xvi) ORS 475.846 - Unlawful manufacture of heroin. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xvii) ORS 475.848 - Unlawful manufacture of heroin within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xviii) ORS 475.850 - Unlawful delivery of heroin. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xix) ORS 475.852 - Unlawful delivery of heroin within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xx) ORS 475.854 - Unlawful possession of heroin. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxi) ORS 475.856 - Unlawful manufacture of marijuana. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxii) ORS 475.858 - Unlawful manufacture of marijuana within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxiii) ORS 475.860 - Unlawful delivery of marijuana if the conviction is a felony. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxiv) ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxv) ORS 475.864 - Unlawful possession of marijuana if the conviction is a felony. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxvi) ORS 475.866 - Unlawful manufacture of 3,4-methylenedioxyamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxvii) ORS 475.868 - Unlawful manufacture of 3,4-methylenedioxyamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxviii) ORS 475.870 - Unlawful delivery of 3,4-methylenedioxyamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxix) ORS 475.872 - Unlawful delivery of 3,4-methylenedioxyamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxx) ORS 475.874 - Unlawful possession of 3,4-methylenedioxyamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxi) ORS 475.876 - Unlawful manufacture of cocaine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxii) ORS 475.878 - Unlawful manufacture of cocaine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxiii) ORS 475.880 - Unlawful delivery of cocaine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxiv) ORS 475.882 - Unlawful delivery of cocaine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxv) ORS 475.884 - Unlawful possession of cocaine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxvi) ORS 475.886 - Unlawful manufacture of methamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxvii) ORS 475.888 - Unlawful manufacture of methamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxviii) ORS 475.890 - Unlawful delivery of methamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xxxix) ORS 475.892 - Unlawful delivery of methamphetamine within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xl) ORS 475.894 - Unlawful possession of methamphetamine. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xli) ORS 475.904 - Unlawful manufacture or delivery of controlled substance within 1,000 feet of school. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xlii) ORS 475.908 - Causing another person to ingest a controlled substance. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)

(xliii) ORS 475.910 - Application of controlled substance to the body of another person. (If the conviction meets the criteria in sections (3) or (4) of this rule, the *subject individual* must be denied.)

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(xiv) ORS 475.962 - Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xlv) ORS 475.967 - Possession of precursor substance with intent to manufacture controlled substance. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(xvi) ORS 475.977 - Possessing or disposing of methamphetamine manufacturing waste. (If the conviction meets the criteria in section (4) of this rule, the *subject individual* must be denied.)

(6) In addition to any other requirements pertaining to fitness determinations:

(a) Any fitness determinations made with regard to crimes identified in subsection (b) of this section must adhere to the following requirements:

(A) Approval of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:

(i) An Administrator designated by the Department's Child Welfare Director.

(ii) A District Manager.

(iii) If permitted by the District Manager in the District in which the *criminal records check* was initiated, a Child Welfare Program Manager.

(B) Denial of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator designated by the Department's Child Welfare Director.

(b) Crimes to which subsection (a) of this section applies are as follows:

(A) Any felony conviction for a crime which is not described in sections (3), (4), or (5) of this rule.

(B) A conviction for any crime involving domestic violence and which is not described in sections (3), (4), or (5) of this rule.

(7) In addition to any other requirements pertaining to fitness determinations:

(a) Any fitness determinations made with regard to crimes identified in subsection (b) of this section must adhere to the following requirements:

(A) Approval of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:

(i) An Administrator designated by the Department's Child Welfare Director.

(ii) A District Manager.

(iii) If permitted by the District Manager in the District in which the *criminal records check* was initiated, a Child Welfare Program Manager or a Child Welfare Supervisor.

(B) Denial of any *subject individual* convicted of a crime identified in subsection (b) of this section may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator designated by the Department's Child Welfare Director.

(b) Subsection (a) of this section applies to any misdemeanor conviction for a crime which is not described in sections (3) to (6) of this rule.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0455

Potentially Disqualifying Arrests

(1) Behavior that results in an arrest or a history of arrests may raise concerns about the fitness of a *subject individual* to be a *relative caregiver*, a *foster parent*, an adoptive resource, or an *other person in the household*. If a *subject individual* has a history of one or more arrests for any of the following offenses, the Department determines if, considering the behavior that resulted in the arrest, the *subject individual* is fit to be a *relative caregiver*, *foster parent*, adoptive resource, or *other person in the household*:

(a) Child abuse or neglect.

(b) Domestic violence.

(c) A crime against a *child*, including pornography.

(d) A crime involving *violence*, including rape, sexual abuse, manslaughter, or homicide.

(e) Physical assault.

(f) Battery.

(g) A drug or alcohol related offense.

(h) A weapons-related offense.

(2) If a *subject individual* has been arrested for any of the offenses listed in section (1) of this rule, the Department must make a *fitness determination* and approve or deny the *subject individual*.

(3) Approval of any *subject individual* arrested for a crime identified in section (1) of this rule may not occur unless the *fitness determination* leading to approval is made by one of the following authorized designees:

(a) An Administrator designated by the Department's Child Welfare Director.

(b) A District Manager.

(c) If permitted by the District Manager in the District in which the *criminal records check* was initiated, a Child Welfare Program Manager or a Child Welfare Supervisor.

(4) Denial of any *subject individual* arrested for a crime identified in section (1) of this rule may not occur unless the *fitness determination* leading to denial is made by an *authorized designee* who is a Child Welfare Supervisor, a Child Welfare Program Manager, a District Manager, or an Administrator designated by the Department's Child Welfare Director.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0457

Weighing Test

When making a *fitness determination* with regard to a *subject individual* with a history of potentially disqualifying crimes or conditions, the *authorized designee* must consider any of the following factors that apply to the *subject individual* or the subject individual's situation:

(1) Circumstances regarding the nature of potentially disqualifying convictions and conditions, including but not limited to:

(a) The details of the incidents that led to potentially disqualifying convictions, arrests, or other disqualifying conditions.

(b) The age of the *subject individual* at the time of the incidents that led to potentially disqualifying convictions, arrests, or other disqualifying conditions.

(c) The passage of time since the incidents that led to potentially disqualifying convictions, arrests, or other disqualifying conditions.

(d) The facts that support the convictions, arrests, or potentially disqualifying conditions.

(e) Whether or not the *subject individual* was charged with or indicted for a crime related to a potentially disqualifying arrest.

(f) The disposition of any charge or indictment related to a potentially disqualifying arrest.

(g) Consideration of state and federal laws, including regulations and rules which address crimes or conditions that potentially disqualify a person from being a *relative caregiver*, *foster parent*, adoptive resource, or an *other person in the household*.

(2) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior.

(g) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

(B) Work history (employee or volunteer).

ADMINISTRATIVE RULES

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(h) Indication of the subject individual's cooperation, honesty, or the making of a false statement during the *criminal records check* process.

(i) Acknowledgment and acceptance of responsibility for criminal activity and potentially disqualifying conditions.

(j) When the *subject individual* is seeking to provide care for a specific *child* or *young adult*, whether or not denial of the *subject individual* would create emotional harm to the *child* or *young adult* and placement of the *child* or *young adult* with the *subject individual* would be a safe placement that is in the best interest of the *child* or *young adult*.

(3) The *authorized designee* must consider the relevancy of the subject individual's criminal activity or potentially disqualifying conditions to the subject individual's fitness to be *relative caregiver, foster parent, adoptive resource, or other person in the household*.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0460

Contesting a Fitness Determination

(1) If the Department determines that a *subject individual* cannot be certified or approved as a *relative caregiver, foster parent, or adoptive resource* based on a negative *fitness determination*, unless the *subject individual* voluntarily withdraws from the process, the Department must notify the *subject individual* in writing that the *subject individual*:

(a) Has a right to inspect and challenge his or her Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC 20537-9700; and

(c) May appeal the Department's determination of unfitness or indicate an intent to challenge information in the OSP or FBI report by requesting a *contested case hearing* pursuant to ORS chapter 183 and OAR 413-010-0500 to 413-010-0535 provided that the Department receives the request for a *contested case hearing* in writing within 30 days from the date of mailing the notice.

(2) Upon the determination of the Department that an applicant for relative care, foster care, or adoption of a *child* in the custody of the Department cannot be approved due to the denial of an *other person in the household*, the certifier or adoption worker must inform:

(a) The *other person in the household*, who was denied, of the right to inspect and challenge the subject individual's Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035 and the person's rights under ORS 181.557(2)(b);

(b) The *other person in the household*, who was denied, of the right to challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC 20537-9700; and

(c) The *relative caregiver, foster parent, or adoption applicant* whose approval is affected by the denial of the *other person in the household*, in writing, that:

(A) Based on the *other person in the household's* denial, the Department may not certify or approve the *relative caregiver, foster parent, or adoption applicant* as long as the *other person in the household* remains in the home or provides care to a *child* or *young adult* in the home; and

(B) The *relative caregiver, foster parent, or adoption applicant* may appeal in a *contested case hearing* the Department's denial, provided that the Department receives the applicant's request for a *contested case hearing* in writing within 30 days from the date of mailing the notice to the applicant.

(3) Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535 describes the requirements and process for requesting a *contested case hearing* due to the denial or revocation of a Certificate of Approval or a denial of approval to be an adoptive resource, including denials based on the criminal history, or false statement with regard to criminal history, of an applicant or *other person in the household*.

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07,

cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09; CWP 34-2011(Temp), f. 12-27-11, cert. ef. 12-28-11 thru 6-25-12; CWP 3-2012, f. & cert. ef. 6-26-12

413-120-0475

Record Keeping, Confidentiality

(1) All LEADS reports are confidential, and the *authorized designee* must maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEADS and FBI reports are confidential and may only be received or viewed by an *authorized designee*.

(b) LEADS and FBI and any photocopies may be shared with another *authorized designee* only if there is a need to know consistent with these rules.

(2) The results of a national *criminal records check* provided by the FBI or the OSP are confidential and may not be disseminated by the Department, except in the following circumstances:

(a) If a fingerprint-based *criminal records check* was conducted on the *subject individual*, the *subject individual* is provided a copy of the results if requested.

(b) The state and national criminal offender information may be provided as exhibits during a *contested case hearing*.

(3) All completed background check requests, other criminal records information, and other records collected or developed during the background check or contested case process must be kept confidential and disseminated only on a need-to-know basis.

(4) The Department must retain and destroy all *criminal records check* documents pursuant to federal law and records retention schedules published by Oregon State Archives.

(5) Documents may be requested and reviewed by the Oregon State Police for the purposes of determining and ensuring compliance with these rules (OAR 413-120-0400 to 413-120-0475).

Stat Auth.: ORS 409.050, 418.005, 418.016

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.010, 418.005, 418.016

Hist.: CWP 3-2012, f. & cert. ef. 6-26-12

Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs Chapter 461

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 22-2012

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 6-30-12

Notice Publication Date: 5-1-2012

Rules Amended: 461-175-0210

Subject: OAR 461-175-0210 about how the Department treats notice situations when clients move and whereabouts are unknown is being amended to follow SNAP reporting requirements. This rule currently allows the closure of cases without a notice for all SNAP reporting systems, when clients move and their whereabouts are unknown. Under the amended rule, only SNAP cases in CRS (Change Reporting System) can be closed for returned mail with no forwarding address or whereabouts unknown. This rule is also being amended to make permanent the temporary rule changes that were effective January 1, 2012.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-175-0210

Notice Situation; Client Moved or Whereabouts Unknown

(1) To end benefits if a client has moved out of state, the Department sends the following decision notice (see OAR 461-001-0000):

(a) In the ERDC, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, SAC, and TANF programs:

(A) The Department sends a timely continuing benefit decision notice (see OAR 461-001-0000) to clients who have moved out of state.

(B) The Department sends a basic decision notice (see OAR 461-001-0000) if the client becomes eligible for benefits in another state.

(b) In the SNAP program, no decision notice is required if the Department determines that the benefit group (see OAR 461-110-0750) has moved out of Oregon.

ADMINISTRATIVE RULES

(2) If Department mail or benefits have been returned with no forwarding address, the Department gives the client the benefits if the client's whereabouts become known during the period covered by the returned benefits. See OAR 461-165-0130 for when SNAP benefits can be sent out of state. If the client's whereabouts are unknown, the Department ends benefits by sending the following decision notice to their last known address:

- (a) In all programs except the SNAP program, a basic decision notice.
- (b) In the SNAP program, for cases in the CRS reporting system, no decision notice is required.

Stat. Auth.: ORS 411.060, 411.095, 411.404 & 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.404 & 411.816 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 37-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SSP 22-2012, f. 6-29-12, cert. ef. 6-30-12

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 23-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 12-28-12

Notice Publication Date:

Rules Amended: 461-160-0620

Subject: OAR 461-160-0620, relating 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 minimum maintenance need standard and shelter standard that are used to calculate how much of the client's income can be diverted to the community spouse.

Rules Coordinator: Annette Tesch—(503) 945-6067

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 OSIPM 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.** \$1,892 is added to the amount over \$567 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,841 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 SNAP 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 \$1,892. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,892.

(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 & 411.706

Stats. Implemented: ORS 411.060, 411.070 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 24-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 12-28-12

Notice Publication Date:

Rules Amended: 461-120-0340, 461-145-0080

ADMINISTRATIVE RULES

Subject: OAR 461-120-0340 about the requirement in the TANF program to obtain child support from a non-custodial parent is being amended to expand the exemption from the requirement that a caretaker relative help the Department establish paternity of each needy child and locate and obtain support payments from the noncustodial parent of each needy child. The exemption would be expanded to any caretaker relative in a filing group that is a two-parent family.

OAR 461-145-0080 about the treatment of child support and cash medical support to determine eligibility for the Department's public assistance, medical and SNAP programs is being amended to expand the types of two-parent families in the TANF program for whom on-going eligibility and benefit determination, child support is considered countable unearned income. This amendment counts child support for all two-parent families, reducing the amount of the cash assistance grant.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-120-0340

Client Required To Help Department Obtain Support From Noncustodial Parent; TANF

In the TANF program:

(1) To be eligible for program benefits, except as permitted in section (2) of this rule, a caretaker relative (see OAR 461-001-0000) must make a good faith effort to help the Department:

(a) Establish paternity of each needy child; and

(b) Locate and obtain support payments from the noncustodial parent of each needy child.

(2) A caretaker relative is excused from the requirements of section (1) of this rule:

(a) For good cause under OAR 461-120-0350;

(b) If the caretaker relative is a participant in the Post-TANF or SFPSS programs; or

(c) If the filing group (see OAR 461-110-0330) is a two-parent family.

(3) A good faith effort includes taking such actions as:

(a) Supplying sufficient information for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. Sufficient information includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the caretaker relative, regarding any noncustodial parent of a needy child:

(A) Full legal name and nicknames.

(B) Social Security Number.

(C) Current or last known address.

(D) Current or last known employer, including name and address.

(E) If a student, current or last known school.

(F) Criminal record, including where and when incarcerated.

(G) Date of birth, or age.

(H) Race.

(I) Any known group or organizational affiliations.

(J) Names and addresses of close friends or relatives.

(K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(4) If a client who has not been excused under section (2) of this rule has the opportunity to make a good faith effort to help the Department establish paternity of a needy child or locate or obtain support payments from the noncustodial parent of a needy child (and is unable to show he or she has good cause under OAR 461-120-0350), the Department applies penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For a benefit group (see OAR 461-110-0750) not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the filing group (see OAR 461-110-0330) is ineligible.

(b) For a benefit group receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's

failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25 percent for the first month following the month in which failure to comply is determined.

(B) 50 percent for the second month following the month in which failure to comply is determined.

(C) 75 percent for the third month following the month in which failure to comply is determined.

(D) 100 percent (total ineligibility for the benefit group) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of SNAP benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(5) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 412.024 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 412.024 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12

461-145-0080

Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child or minor parent in the financial group (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) For the purposes of this rule:

(a) "Disregard" means child support, up to \$50 per dependent child or minor parent per financial group per month and not to exceed \$200 per financial group per month, that is not counted as income of the client. Disregard includes current child support only.

(b) "Pass-through" means child support, up to \$50 per dependent child or minor parent per financial group per month and not to exceed \$200 per financial group per month, that is sent to the client before any remaining amount of current child support is withheld by the State. Pass-through includes current child support only.

(3) In the ERDC program, child support is considered countable unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(4) In the SNAP program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:

(A) It is considered countable unearned income in the calculation of the wage supplement; and

(B) Any pass-through pursuant to section (2) of this rule is considered countable unearned income.

(c) All other child support, including any pass-through pursuant to section (2) of this rule, is considered countable unearned income.

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(5) Except as provided otherwise in section (9) of this rule for the TANF program, in the MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) In determining initial eligibility, except for disregard pursuant to section (2) of this rule, child support received by the Oregon Department of

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Justice, Division of Child Support (DCS) is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) In determining on-going eligibility, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support received by the DCS is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(c) For clients working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

(d) All other child support payments:

(A) Paid directly to the financial group that are not turned over to the Department or to the DCS or that are paid to a third party on behalf of a member of the financial group are considered countable unearned income.

(B) Paid directly to the financial group that are turned over to the Department or to the DCS are considered countable unearned income except for any amount of pass-through and disregard pursuant to section (2) of this rule.

(e) Cash medical support is excluded in determining countable income.

(6) In the OHP program:

(a) Child support paid directly to the financial group or paid to a third party for the benefit of the financial group is considered countable unearned income.

(b) Cash medical support is excluded.

(7) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the financial group are considered countable unearned income. Child support and cash medical support paid by the financial group are not deductible from income.

(8) In the SFPSS program, notwithstanding section (5) of this rule, for on-going eligibility and benefit determination:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(9) For on-going eligibility and benefit determination for TANF clients in a two-parent household:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(d) For a filing group (see OAR 461-110-0330) with at least one member working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90;

AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-

1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-

1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-

1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f.

& cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef.

10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005,

f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. &

cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2008(Temp), f.

& cert. ef. 3-21-08 thru 9-17-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert.

ef. 10-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f.

& cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-

29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 25-2012

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Rules Amended: 461-025-0300, 461-025-0310, 461-025-0315, 461-115-0090, 461-115-0140, 461-115-0230, 461-120-0210, 461-130-0330, 461-135-0010, 461-140-0120, 461-150-0080, 461-155-0250, 461-165-0035, 461-165-0180, 461-175-0200

Rules Repealed: 461-025-0300(T), 461-025-0310(T), 461-115-0230(T), 461-135-0010(T), 461-155-0250(T), 461-165-0035(T)

Subject: OAR 461-025-0300 about contested case hearings is being amended to continue certain current contested case procedures by opting out as permitted from new statewide rules on the topics of requests for admission, interrogatories, and disclosure of witness addresses and telephone numbers. Under this amendment, witness addresses and phone numbers will not be disclosed to clients not represented by an attorney. Witness addresses and phone numbers will also not be disclosed to clients represented by an attorney if the Department has concerns that the release of the information may affect the safety of the witness. This rule is also being amended to state that requests for admission and interrogatories would only be permitted when the Department of Justice is representing the Department of Human Services.

OAR 461-025-0310 about hearing requests is being amended to indicate that a client has a right to a hearing when there is a decision notice or contested case notice from the Department that denies in part a claim that the Department previously underissued public assistance or SNAP program benefits as well as when the Department modifies a grant of aid or public assistance. This rule is also being amended to continue current contested case procedures under which the timeliness of a hearing request is based on the date the Department receives it, not the date of the postmark. This rule is also being amended to implement ORS 411.103 by setting out the Department's policy when a hearing request is late because a notice was not received and there was no actual knowledge of it. This rule is also being amended to change the policy for allowing late hearing requests. Under this change, a much wider array of reasons for being late would be allowed but the rule would set a firm deadline for late hearing requests, after which no late hearing requests would be allowed other than those for liable adults who were not sent an overpayment notice.

OAR 461-025-0315 about expedited hearings is being amended to update the rule by revising the methods by which clients are notified of hearings and by changing its description of what triggers a face-to-face hearing.

OAR 461-115-0090 about authorized representatives is being amended to allow the Department in all programs except SNAP to deny the client's selection of an authorized representative if the authorized representative has a conflict of interest. This rule is also being amended to clarify its requirements for the SNAP program by expressly stating requirements in federal regulations instead of cross-referencing the regulation and by stating when other rules and other sections of this rule apply.

OAR 461-115-0140 about authorized representatives in the SNAP program is amended to revise the policy about when an individual serving an Intentional Program Violation may serve as an authorized representative. This rule is also being amended to state when and how employees of the Department or contractor involved in the certification and issuance processes for SNAP benefits may serve as authorized representatives.

OAR 461-115-0230 about interviews in the application process is being amended to state that the ERDC program requires an interview to process an initial application and a renewal of benefits. This is a federal requirement for the ERDC program, but the requirement had only been stated in the Family Services Manual. This rule amend-

ADMINISTRATIVE RULES

ment also makes permanent a temporary rule change adopted on February 29, 2012.

OAR 461-120-0210 about requirements to provide social security numbers is being amended to fit current practice and indicate that the exception which allows benefits for a newborn in the SNAP program includes new benefit groups, not just existing ones.

OAR 461-130-0330 about disqualifications in the SNAP, REF, and TANF programs is being amended to clarify the first level of disqualification in the REF and TANF programs. The current rule states the penalty for the first level of disqualification is for three months. Because the disqualification could be removed at any point during the three months if the client completed the cooperation requirement, or REF or TANF closes, the amendment will provide that the penalty at the first level is for up to three months or until the client has completed the two consecutive week cooperation period.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to indicate that children who are born to a mother eligible for and receiving OHP-CHP benefits (OHP coverage for persons under 19 years of age who qualify under the 201 percent income standard) are assumed eligible to receive medical benefits until the end of the month the child turns one year of age. This amendment makes permanent the temporary rule change adopted on January 13, 2012.

OAR 461-140-0120 about the availability and treatment of lump-sum income is being amended to clarify one situation in which lump-sum income is not counted in the EA (currently closed), MAA, MAF, REF, REFM, SAC, and TANF programs. The current rule states that lump-sum income is unavailable if a financial group "...spends the lump-sum income on an emergency, such as a natural disaster or the serious injury or death of a household member." The amendment broadens the exemption to cover spending on an immediate basic need and removes the specific emergency examples.

OAR 461-150-0080 about prospective budgeting of variable income in the context of determining if clients meet income eligibility requirements is being amended to make the rule consistent with current prospective budgeting practices in the SNAP program by removing the statement that a financial group with variable income in the SNAP program may choose to have its benefit level changed from month to month.

OAR 461-155-0250 about income and payment standards in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to clarify current policy regarding income standards for certain clients in nonstandard living arrangements (NSLA). This amendment clarifies that the 300 percent of the full SSI standard only applies to clients in an NSLA who also meet the requirements of OAR 461-135-0750 for certain individuals in long-term care or waived services. This amendment also clarifies that a qualifying trust exemption applies to that standard. This amendment makes permanent temporary changes that became effective February 1, 2012.

OAR 461-165-0035 about alternate payees in the context of electronic benefit transfers is being amended to state who may not be an alternate payee. This amendment prohibits Department-approved child care providers from being assigned as an alternate payee for child care benefits in the ERDC, JOBS, JOBS Plus, and TANF programs. This rule is also being amended to make permanent temporary rule changes adopted on February 27, 2012.

OAR 461-165-0180 about eligibility of child care providers is being amended to update policies as part of the implementation of the new Child Care Billing and Attendance Tracking (CCBAT) system. This amendment indicates which written attendance records providers will be required to keep and the deadline for providers to complete registration for the CCBAT system. Registration is a requirement, and once the CCBAT system is implemented, providers must use the CCBAT system to receive child care subsidy payments.

OAR 461-175-0200 about the types of notices of rights to a hearing that the Department sends in connection with various decisions is being amended to indicate that the Department will send a deci-

sion notice when the Department adjusts previously underissued cash assistance or SNAP benefits.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-025-0300

Contested Case Hearings

(1) The rules in Division 25 of this chapter of rules apply to contested case hearings of the Department authorized by OAR 461-025-0310(1). The hearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 and following, except to the extent that Department rules are permitted to and provide for different procedures.

(a) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in this division of rules.

(b) In any contested case to which this division of rules applies:

(A) When a party or claimant is not represented by an attorney:

(i) Upon request of the party or claimant, the Department provides work contact information-- telephone number and address — for any Department employees expected to testify at the hearing as witnesses, except rebuttal witnesses.

(ii) Except as provided in subparagraph (i) of this paragraph, the Department and any party or claimant in the contested case are not required to provide the telephone numbers and addresses of witnesses prior to the hearing.

(B) The Department does not provide the telephone number and addresses of a witness if the Department has concerns that the release of the information may affect the safety of the witness.

(2) Department employees are authorized to appear on behalf of the Department in the following types of hearings:

(a) Public assistance.

(b) Employment-Related Day Care.

(c) Supplemental Nutrition Assistance Program.

(3) When a Department employee represents the Department in a contested case to which this division of rules applies, requests for admission and written interrogatories are not permitted.

(4) The Department's contested case hearings governed by this division of rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the party's consent.

(5) The Department has adopted the exceptions to the Attorney General's model rules set out in subsection (1)(b) and section (3) of this rule due to its caseload volume and because these discovery procedures would unduly complicate or interfere with the hearing process.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.816, 412.014 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2012(Temp), f. & cert. ef. 1-31-12 thru 7-29-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-025-0310

Hearing Requests

(1) A claimant (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for SNAP program benefits — within 30 days of the filing date.

(B) An application for a JOBS support service payment — within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend SNAP program benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under division 160 or 165 of this chapter in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of SNAP program benefits was an overissuance.

(e) The Department modifies a grant of public assistance or a grant of aid; or the claimant claims that the Department previously underissued public assistance or SNAP program benefits and the Department denies, or denies in part, that claim.

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(f) The household disputes its current level of SNAP program benefits.

(g) The filing group (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the SNAP program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).

(k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of nursing facility services or Waivered Services (defined at OAR 461-001-0030).

(m) The claimant's benefits are changed to vendor, protective, or two-party payments.

(n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.

(o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.

(p) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance and SNAP programs, when the Department's Administrative Hearing Request form (form DHS 443) is —

(A) Completed;

(B) Signed by the claimant, the claimant's attorney, or the claimant's authorized representative (see OAR 461-115-0090); and

(C) Received by the Department. OAR 137-003-0528(1)(a) (which allows hearing requests to be treated as timely based on the date of the post-mark) does not apply to hearing requests contesting a decision notice (see OAR 461-001-0000). The Department has adopted the exception to the Attorney General's model rules set out in this paragraph due to operational conflicts.

(b) In the SNAP program, when the Department receives an oral or written statement from the claimant, the claimant's attorney, or the claimant's authorized representative that the claimant wishes to appeal a decision affecting the claimant's SNAP program benefits to a higher authority.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(4) In the event a request for hearing is not timely, the Department may issue an order of dismissal if there is no factual dispute about whether sections (7) and (10) of this rule provide a right to a hearing. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the decision notice (see OAR 461-001-0000) in public assistance and medical programs.

(b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the decision notice in the SNAP program, except:

(A) A filing group may submit a hearing request at any time within a certification period (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) When the Department receives a completed hearing request that is not filed within the timeframe required by section (6) of this rule but is filed no later than 120 days after a decision notice became a final order:

(a) The Department refers the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice;

(A) If the Department finds that the claimant and claimant's representative did not receive the decision notice and did not have actual knowledge of the notice; or

(B) If the Department finds that the claimant did not meet the timeframe required by section (6) of this rule due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), reasonable reliance on the statement of a Department employee relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department.

(b) The Department may refer the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether either of the following paragraphs apply.

(A) The claimant or claimant's representative received the decision notice or had actual knowledge of the decision notice. At the hearing, the Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the claimant or claimant's representative, as provided to the Department.

(B) The claimant qualifies for a contested case hearing on the merits under paragraph (a)(B) of this section.

(c) The Department may dismiss a request for hearing as untimely if the claimant does not qualify for a hearing under subsection (a) of this section.

(8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

(9) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual's documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.

(10) If the Department receives a hearing request more than 120 days after a decision notice became a final order;

(a) For an overpayment notice:

(A) The Department verifies whether its records indicate that the liable adult requesting the hearing was sent the overpayment notice.

(B) If no overpayment notice was sent to that liable adult, the overpayment hearing request is timely. The Department will send the claimant a decision notice or a contested case notice.

(C) If the Department determines that an overpayment notice was sent to the liable adult, there is no hearing right based on the issue of whether or not the hearing request was received.

(b) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.

(c) The Department may dismiss a request for hearing as untimely if the claimant does not qualify for a hearing under subsections (a) or (b) of this section.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.408, 411.816, 411.892, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.103, 411.117, 411.404, 411.408, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; 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 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 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 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 4-2012(Temp), f. & cert. ef. 1-31-12 thru 7-29-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

461-025-0315

Expedited Hearings

(1) A claimant has the right to an expedited hearing in each of the following situations:

(a) The Department denies or fails to issue a timely decision on claimant's request for:

- (A) Emergency assistance; or
- (B) TA-DVS (see OAR 461-135-1235).

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment.

(c) The claimant has the right to a hearing over a reduction, suspension, or closure and disagrees with the Department's decision to deny the continuation of one or more of the following pending a requested hearing:

- (A) Cash benefits.
- (B) Supplemental Nutrition Assistance Program benefits.
- (C) Medical benefits.

(d) Nursing Home, Title XIX Home and Community Based Care waived, Spousal Pay, or Independent Choices Program services that have been reduced or closed as a result of a service re-assessment conducted in accordance with OAR 411-015.

(d) The claimant's request for expedited SNAP service or DSNAP is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the SNAP program.

(e) In the JOBS program, the Department denies an application for a support service payment or a payment for a basic living expense authorized by OAR 461-190-0211, or the Department reduces or closes a support service payment authorized by OAR 461-190-0211, or the Department does not issue a JOBS support service payment within the time frames required under OAR 461-115-0190.

(2) Public Assistance programs: An expedited hearing is a telephone hearing held within five working days of the Department's receipt of the written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service, by overnight mail, or if the claimant agrees by electronic mail. The final order must be issued within three working days from the date the hearing closes.

(3) Supplemental Nutrition Assistance Program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service, by overnight mail, or if the claimant agrees by electronic mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

(4) If the Office of Administrative Hearings grants a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Department of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases.

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.103, 411.117, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 21-1990(Temp), f. 8-28-90, cert. ef. 9-1-90; AFS 2-1991, f. 1-15-91, cert. ef. 2-1-91; AFS 4-1995, f. & ef. 2-1-95; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-115-0090

Authorized Representatives; General

(1) The head of household, spouse (see OAR 461-001-0000), or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits.

(2) In all programs except the SNAP program, the Department must allow a person or persons of the applicant's choice to act as the authorized representative unless the person may cause harm to the client or may be considered as having a conflict of interest.

(3) In all programs except the SNAP program, if an authorized representative is needed but has not been designated by the client, the Department will appoint one.

(4) In the SNAP program:

(a) Except as limited by sections (5) and (6) this rule, the selection of an authorized representative must be made in writing by an adult member of the household.

(b) The selection and authority of an authorized representative is further limited by OAR 461-115-0140.

(5) A client who resides in a drug addiction or alcoholic treatment center identified in OAR 461-135-0550(2) may apply for SNAP program benefits only through an authorized representative. The authorized representative must be an employee of and designated by the center.

(6) A client with a disability (see OAR 461-001-0015) who participates in the SNAP program while residing in a group living facility (see OAR 461-001-0015) may participate through an authorized representative or on his or her own behalf, at the option of the group living facility (see OAR 461-135-0510(2)(e)).

(7) In the TANF program, a person not related to the dependent child may serve as authorized representative or alternate payee for not more than 60 days.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-115-0140

Authorized Representative or Alternate Payee; SNAP

In the SNAP program:

(1) None of the following may serve as authorized representative (see OAR 461-115-0090) or alternate payee:

(a) An individual serving an Intentional Program Violation, unless the Department determines no one else is available to serve as the authorized representative.

(b) A landlord or a vendor of goods or items who deals directly with the client, including a retailer authorized to accept SNAP benefits.

(c) Employees of the Department or an employee of a contractor involved in the certification and issuance processes for SNAP benefits, unless authorized in writing by the designee of the Department's SNAP Program Manager. The designee must determine no one else is available to serve as the authorized representative.

(d) A provider of meals for the homeless.

(2) An authorized representative or alternate payee who knowingly misrepresents the circumstances of the filing group (see OAR 461-110-0370) or misuses SNAP benefits is subject to penalty as follows:

(a) In group living (see OAR 461-001-0015) situations or treatment programs for drug addiction or alcohol abuse, the facility may be prosecuted under applicable federal or state law.

(b) For other authorized representatives and alternate payees not covered by subsection (a) of this section, the Department may prohibit the person from serving as a representative or payee for one year.

(3) Except as provided by this rule or by OAR 461-115-0090, a client may select his or her authorized representative or alternate payee.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-115-0230

Interviews

(1) In the TANF program, the Department may conduct a required face-to-face interview by telephone or home visit if an authorized representative (see OAR 461-115-0090) has not been appointed, and participating in a face-to-face interview is a hardship (see section (2) of this rule) for the household.

(2) For the purposes of this rule, "hardship" includes but is not limited to:

- (a) Care of a household member;
- (b) A client's age, disability (see OAR 461-001-0000), or illness;
- (c) A commute of more than two hours from the client's residence to the nearest branch office (see OAR 461-001-0000);
- (d) A conflict between the client's work or training schedule and the business hours of the branch office; and
- (e) Transportation difficulties due to prolonged severe weather or financial hardship.

(3) In the SNAP program:

(a) An interview must be scheduled so that the filing group (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.

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(b) A face-to-face interview must be granted at the applicant's request.

(c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.

(d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the filing date (OAR 461-115-0040) to be eligible for benefits.

(e) An adult in the filing group or the authorized representative of the filing group is interviewed once every 12 months.

(4) In the ERDC program:

(a) Except as provided otherwise in subsection (c) of this section, an interview with an adult in the filing group (see OAR 461-110-0350) or the authorized representative of the filing group is required to process an initial application and a renewal of benefits.

(b) A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.

(c) An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a decision notice of ineligibility will be sent under OAR 461-115-0016.

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831 & 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831 & 414.839

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 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 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 22-2011(Temp), f. & cert. ef. 7-22-11 thru 1-18-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 7-2012(Temp), f. & cert. ef. 2-29-12 thru 8-27-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-120-0210

Requirement to Provide Social Security Number (SSN)

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a need group (see OAR 461-110-0630) or a benefit group (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing group or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, to be included in the benefit group, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in the SNAP and TANF programs, to be included in the need group, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the BCCM, CEC, CEM, EXT, GA, GAM, HKC, MAA, MAF, OHP, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the SNAP program:

(A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be included in a benefit group (see OAR 461-110-0750) for six months following the date the child is born or until the group's next recertification, whichever is later.

(c) In the TANF program, without meeting the SSN requirements of section (4) of this rule, a newborn child born in Oregon may be added to the benefit group for six months following the child's date of birth or until the

next redetermination of eligibility of the filing group (see OAR 461-110-0330), whichever is sooner.

(7) In the SNAP program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a disability (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-130-0330

Disqualifications; Pre-TANF, REF, SNAP, TANF

(1) In the Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a volunteer (see OAR 461-130-0305) participant in an employment program.

(2) In the Pre-TANF, REF, and TANF programs, a mandatory (see OAR 461-130-0305) client who fails to comply with an employment program participation requirement and does not have good cause (see OAR 461-130-0327) for the failure to comply is subject to disqualification under this rule only after the requirements of all of the following subsections are met:

(a) The client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231;

(b) The Department has determined the client is willfully non-compliant and does not have good cause for failing to comply with a requirement of the program;

(c) The Department has offered (and the client has refused) or conducted screenings (and assessed if appropriate) for physical or mental health needs, substance abuse, domestic violence, and learning needs;

(d) The Department has determined the client has no barriers (see OAR 461-001-0025) or refuses to take appropriate steps to address identified barriers;

(e) The Department has determined the client has not met federally required participation rates (see OAR 461-001-0025); and

(f) The Department has assessed for any risk of harm posed to the children by a reduction in cash assistance.

(3) In the REF and TANF programs, the effects of a JOBS disqualification are progressive. There are two levels of disqualification. Once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

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(a) At the first level, the penalty is removal of the disqualified client from the need group (see OAR 461-110-0630) for up to three months or until the client has completed the two-consecutive week cooperation period.

(b) At the second level, the need group receives no cash benefit in the program for one month.

(c) At the end of the second level, program benefits are closed and the filing group may not receive program benefits for the following two consecutive months. This may be prevented if the disqualified client:

(A) Contacts a representative of the Department in order to re-engage in the JOBS program prior to the end of the second level; and

(B) Begins the two consecutive weeks of cooperation as outlined in section (4) of OAR 461-130-0335 prior to the end of the second level; or

(C) Is no longer a member of the household group (see OAR 461-110-0210 and 461-130-0335(2)); or

(D) Is unable to participate because there are no appropriate activities (see OAR 461-001-0025) or support services (see 461-001-0025) necessary to support the activity (see 461-001-0025).

(4) In the SNAP program:

(a) A mandatory client who fails to comply with the requirements of an employment program is subject to disqualification. A disqualified client is removed from the need group until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:

(A) One calendar month for the first failure to comply.

(B) Three calendar months for the second failure to comply.

(C) Six calendar months for the third and subsequent failures to comply.

(b) A client who is exempt (see OAR 461-130-0305) from participation in the SNAP employment program because he or she is a mandatory participant in the JOBS program, receiving unemployment compensation benefits, or has applied for unemployment compensation benefits and is waiting on an initial decision must comply with the requirements of those programs. If the client fails to comply with the requirements of the applicable program the client is disqualified from receiving SNAP benefits, unless he or she can show good cause under OAR 461-130-0327.

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 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; 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 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-135-0010

Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for the EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) A pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A child (see OAR 461-001-0000) born to a mother eligible for and receiving EXT, MAA, MAF, OHP, OSIPM, or SAC benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.

(5) The following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(6) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB BAS program.

(8) A client is assumed eligible for the REFM program 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, 411.404 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 412.049 & 412.025

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-11-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-140-0120

Availability and Treatment of Lump-Sum Income

(1) Lump-sum income (see OAR 461-001-0000) is treated as follows if it is received by a member of a financial group (see OAR 461-110-0530).

(2) In the EA, MAA, MAF, REF, REFM, SAC, SNAP, and TANF programs:

(a) Lump-sum income is a resource.

(b) In the EA, MAA, MAF, REF, REFM, SAC, and TANF programs:

(A) Lump-sum income is considered available to the financial group when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.

(B) Lump-sum income is considered unavailable for a reason beyond the group's control if the member who received the lump-sum income:

(i) Leaves the financial group before spending any of the lump-sum income; or

(ii) Spends the lump-sum income on an immediate basic need or emergency.

(3) In the ERDC and EXT programs, lump-sum income is excluded.

(4) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, lump-sum income is treated as follows:

(a) Lump-sum income not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource, except that in the OSIP and OSIPM programs retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.

(b) The following lump-sum income is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(5) In the OHP program:

(a) If the lump-sum income is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

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(b) If the lump-sum income exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(6) In the OSIP-EPD and OSIPM-EPD programs, lump-sum income is counted as a resource.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; 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 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; 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 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-150-0080

Prospective Budgeting of Variable Income; Not OHP; Not MRS

In all programs except the OHP program, variable income (see OAR 461-001-0000) is used as follows in prospective budgeting (see OAR 461-001-0000) and eligibility (see OAR 461-001-0000) so that the anticipated amount is the same for each month, except as specified in OAR 461-150-0060 and section (6) of this rule:

(1) For income paid more than once per month, determine an average amount per pay period in accordance with sections (2) to (4) of this rule. The average amount is then converted to a monthly amount as follows, if paid:

- (a) Twice per month, multiply by 2;
- (b) Every other week, multiply by 2.15; or
- (c) Once per week, multiply by 4.3.

(2) For variable earned income based on an hourly wage when the past is representative, monthly income is determined by calculating an average number of hours per pay period, then these hours are multiplied by the hourly wage and converted to a monthly amount under section (1) of this rule.

(3) For variable earned income involving various rates of pay (overtime, shift differential, tips) when the past is representative, monthly income is determined by calculating the average income per pay period, then the average income is converted to a monthly amount under section (1) of this rule.

(4) For variable earned or unearned income when the past is representative and income cannot be calculated under section (2) or (3) of this rule, monthly income is determined by averaging the income over:

- (a) A representative period of months by totaling the income for those months and dividing by the number of months used; or
- (b) A representative number of pay periods and converting to a monthly amount under section (1) of this rule.

(5) For variable earned and unearned income when the past is not representative of the income the financial group (see OAR 461-110-0530) will receive during the eligibility period, the client and the Department jointly determine the anticipated income.

(6) In the SNAP program, a financial group meeting the definition of "destitute household" in OAR 461-135-0575 is not eligible to use the income averaging option for the initial month (see OAR 461-001-0000) of eligibility or the first month of a new certification period. For a destitute financial group, income for the initial month of eligibility and the first month of a certification period is determined under OAR 461-150-0100, thereafter, the financial group is subject to sections (2) to (5) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-155-0250

Income and Payment Standard; OSIPM

(1) A client who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.

(2) A client in a nonstandard living arrangement (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have countable income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-

EPD) or have established a qualifying trust as specified in OAR 461-145-0540(9)(c).

(3) The OSIPM (except 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.]

(4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020. [Table not included. See ED. NOTE.]

(5) In the OSIPM program, 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 OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef. 2-1-12 thru 7-30-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-165-0035

Alternate Payees; EBT

(1) An alternate payee may be used to obtain and use benefits for the benefit group (see OAR 461-110-0750) when benefits are issued by electronic benefit transfer (EBT).

(2) Except as provided in section (5) of this rule, an alternate payee may be used any time the primary person, the spouse of the primary person, or another responsible adult member of the filing group names one in writing on a form designated by the Department.

(3) The branch office may appoint an emergency alternate payee if the adult filing group members are temporarily unable to act as payee.

(4) When an alternate payee is named, the Department issues an EBT card and personal identification number (PIN) for that person.

(5) For child care benefits in the ERDC, JOBS, JOBS Plus, and TANF programs, an alternate payee may not be a Department-approved child care provider or acting on behalf of a Department-approved child care provider.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.049
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.816, 412.049
Hist.: AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 6-2012(Temp), f. & cert. ef. 2-27-12 thru 8-25-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-165-0180

Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless:

(a) The provider previously was denied and subsequently was not determined to be eligible; or

(b) The Department determines, following a preliminary or final fitness determination (see OAR 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other subject individual (see OAR 407-007-0210(21)(a)(G)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(a) A finding of "denied". A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in 407-007-0210, the Department finds substantial risk to the

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health or safety of a child in the care of the provider, the provider must be denied and is ineligible for payment. A provider who has been denied has the right to a hearing under OAR 407-007-0330.

(b) A finding of "failed". A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet the eligibility requirements of this rule. A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.

(c) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Department Listing Form (DHS 7494) to the Department. The provider and each individual identified under section (4) of this rule is considered a subject individual and must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider must fully disclose all requested information as part of the records check.

(4) A subject individual is identified as follows:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider's home:

(A) Each individual 16 years of age or older who lives in the provider's home; and

(B) Each individual who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:

(a) Currently be certified or registered with the Child Care Division (CCD) of the Employment Department under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules.

(b) If legally exempt from being certified or registered with the CCD, complete the Department's background check process and be approved by the Department.

(6) Each subject individual must:

(a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250. The Department must withhold authorization for payment to a provider until the background check process is complete and the Department approves the provider.

(b) Provide, in a manner specified by the Department, information required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and in such physical or mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

(c) Not be in the same filing group as the child cared for and cannot be the parent (see OAR 461-001-0000) of the child.

(d) Allow the Department to inspect the site of care while child care is provided.

(e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep written records of any attendance that is not able to be recorded in the Child Care Billing and Attendance Tracking (CCBAT) system. These written records must be retained for a minimum of 12 months and provided to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider must notify the Department before using someone else to supervise a child on a temporary basis.

(g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(h) Report to the Department within 10 days of occurrence:

(A) Any arrest or involvement with CPS or any other agency providing child protective services of the child care provider, household member, or facility member.

(B) Any change to his or her name or address including where care is provided, and the addition of any individual or employee to the household or facility.

(i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(j) Supervise each child in care at all times.

(k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider.

(l) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.

(m) Inform a parent of the need to obtain immunizations for a child.

(n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

(o) Ensure that the facility where care is provided meets all of the following standards, unless the care is provided in the home of the child, except that a provider who provides care in the home of the child must meet only the requirements of paragraph (A) of this subsection:

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The facility has safe drinking water.

(C) The facility has a working smoke detector on each floor level and in any area where a child naps.

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child.

(E) Any firearm, ammunition, and other dangerous item such as any medicine, drug, cleaning supply, paint, plastic bag, and poisonous and toxic material is kept in a secure place out of a child's reach.

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(G) The facility has a telephone in operating condition.

(p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility. This requirement does not apply to a provider registered or licensed by CCD.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(r) Complete registration for the CCBAT system within 45 days of the date of the registration notice.

(8) A child care provider not subject to certification or registration with the Oregon Employment Department, Child Care Division (CCD) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

Stat. Auth.: ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.122, 657A.340, 657A.450

Stats. Implemented: ORS 181.537, 409.010, 409.610, 411.060, 411.070, 411.122, 657A.340, 657A.450

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; 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 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; 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 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program, a basic decision notice is sent for all actions on applications for assistance.

(3) In the JOBS program:

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(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In the TA-DVS program, a basic decision notice (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(c) A decision notice is sent whenever the Department adjusts previously underissued cash assistance or SNAP benefits.

(8) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

(9) When a child is found eligible for HKC program benefits based on an ELA determination, the Department sends a basic decision notice which includes a statement about how the child may qualify for HKC or OHP program benefits with a lower or no premium payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231
Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992,

f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 26-2012(Temp)

Filed with Sec. of State: 7-11-2012

Certified to be Effective: 7-11-12 thru 1-7-13

Notice Publication Date:

Rules Amended: 461-145-0580

Subject: OAR 461-145-0580 about the treatment of veterans benefits in the determination of benefits for various self-sufficiency programs is being amended to change policy for the SNAP program in the treatment of veterans' aid and attendance payments. Aid and attendance payments are made when a veteran requires the aid of another person in order to perform his or her activities of daily living, such as bathing, feeding, dressing, attending to the wants of nature, adjusting prosthetic devices, or protecting himself or herself from the hazards of his or her daily environment, or the veteran is bedridden, blind or in a nursing home. SNAP policy had counted these payments as unearned income. This amendment allows the portion used to pay for aid and attendance care as a reimbursement, which is excluded. Any portion of the payment not used for the aid and attendance of the individual with a disability would count as unearned income.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-145-0580

Veterans' Benefits

(1) Veterans' benefits, other than the educational and training and rehabilitation program benefits, are treated as follows:

(a) Except as specified in sections (2) and (5) of this rule, monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Veterans' benefits that include aid-and-attendance payments are treated as follows:

(a) For OSIP and OSIPM clients receiving long term care or Title XIX waived services:

(A) When determining eligibility, the entire veterans' benefit payment is excluded.

(B) When calculating monthly benefits or patient liability, the entire veterans' benefit payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waived care provided to the client during the months covered by the payment. A client's failure to reimburse the Department in this instance constitutes an overpayment of public assistance in accordance with OAR 461-195-0501 and 461-195-0521 and ORS 411.640 and 411.690. Any excess veterans' benefit payment made to the client is counted as lump sum or periodic income.

(b) For all other clients not covered under subsection (a) of this section:

(A) In the SNAP program, aid-and-attendance payments used to pay for an attendant are treated as a reimbursement and excluded (see OAR 461-145-0440). The remaining benefits, if any, are counted as unearned income.

(B) In the OHP and QMB programs, the aid-and-attendance payments are excluded. The remaining benefits are counted unless excluded under another rule or another section of this rule.

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(C) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client as an overpayment of public assistance pursuant to OAR 461-195-0501, 461-195-0521, and 461-195-0551. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income (see OAR 461-140-0110 and 461-140-0120).

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated:

(a) In the SNAP program, as earned income (see OAR 461-145-0130).

(b) In all other programs, as unearned income.

(5) The following payments are excluded:

(a) Payments under 38 USC 1805 to biological children of Vietnam veterans who are born with spina bifida.

(b) Payments under 38 USC 1815 to children with birth defects born to female Vietnam veterans.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.620, 411.640, 411.690, 411.700, 411.816, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; 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 5-2009, f. & cert. ef. 4-1-09; SSP 26-2012(Temp), f. & cert. ef. 7-11-12 thru 1-7-13

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 27-2012(Temp)

Filed with Sec. of State: 7-12-2012

Certified to be Effective: 7-12-12 thru 1-8-13

Notice Publication Date:

Rules Amended: 461-160-0055

Subject: OAR 461-160-0055 about medical costs that are deductible when benefits are calculated and which describes medical costs for clients in the SNAP program who are elderly or have disabilities is being amended to disallow deductions for any costs related to the medical use of marijuana for these SNAP clients.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-160-0055

Medical Costs That are Deductible; GA, GAM, OSIP, OSIPM, SNAP

(1) This rule applies only to SNAP clients who are elderly (see OAR 461-001-0015) or who have a disability (see 461-001-0015), and to clients in the GA, GAM, OSIP, and OSIPM programs.

(2) Medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(3) Health and hospitalization insurance premiums and coinsurance are deductible. In the OSIPM and SNAP programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(4) In the OSIPM and SNAP programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while an individual is:

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(5) The cost of a medical service is deductible if it is:

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the SNAP program, a medical necessity approved by the Department.

(6) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the SNAP program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for an individual who was a member of the household group (see OAR 461-110-0210) immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for an individual who was a member of the household group immediately prior to death if the remaining household members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper, or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person SNAP benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey) that have received special training to provide a service to the client. This deduction includes the cost of acquiring these animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

(7) In the SNAP program, the costs for and related to medical use of marijuana, including registry identification cards, are not deductible.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.816

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 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; 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 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 27-2012(Temp), f. & cert. ef. 7-12-12 thru 1-8-13

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

Rule Caption: Hearings for Developmental Disability Services Eligibility Determination.

Adm. Order No.: SPD 8-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 6-30-12

Notice Publication Date: 6-1-2012

Rules Amended: 411-320-0175

Rules Repealed: 411-320-0175(T)

Subject: The Department of Human Services (Department) is permanently amending OAR 411-320-0175 to reflect recent policy and practice changes made temporarily by the Department effective January 1, 2012.

The permanent rules:

• Clarify when the Department shall delegate final order authority to the Office of Administrative Hearings;

• Allow the Department to identify the type of order the Department desired when making a referral to the Office of Administrative Hearings;

• Inform and explain the process for filing exceptions;

• Describe timelines; and

• Describe the process followed when a proposed order or a proposed and final order is requested and then received by the Department.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-320-0175

Hearings for Developmental Disability Services Eligibility Determination

(1) DEFINITIONS. As used in this rule:

(a) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(b) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(c) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(d) "Representative" means any adult chosen by the claimant to represent them at the hearing.

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(e) A "Request for Hearing" is a written request by the claimant or the claimant's representative that the claimant wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant or a claimant's representative may request a hearing, as provided in ORS chapter 183, if the claimant disagrees with the Notice of Eligibility Determination (SDS 5104) issued by the CDDP as described in OAR 411-320-0080.

(a) The request for a hearing must be in writing on the DD Administrative Hearing Request (SDS 0443DD) and signed by the claimant or the claimant's representative. Upon request by the claimant or the claimant's representative, the CDDP shall assist in completing the DD Administrative Hearing Request (SDS 0443DD).

(b) The Department must receive the signed DD Administrative Hearing Request (SDS 0443DD) within 45 calendar days from the date on the CDDP's Notice of Eligibility Determination (SDS 5104).

(c) The Office of Administrative Hearings may grant a late hearing request when the Office of Administrative Hearings has determined the claimant or the claimant's representative has good cause.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) Following a redetermination of eligibility as described in OAR 411-320-0080, the claimant or the claimant's representative may request continuing services during the hearing process.

(b) The claimant or the claimant's representative may request continuing services by:

(A) Checking the appropriate box on the DD Administrative Hearing Request (SDS 0443DD); or

(B) Communicating directly with the local CDDP, support services brokerage, or the Department that services remain the same during the hearing process.

(c) To qualify for continuing services, the Department must receive the DD Administrative Hearing Request (SDS 0443DD), which includes the request for continuing services by the effective date identified on the Notice of Eligibility Determination (SDS 5104) or by 10 calendar days following the date of the Notice, whichever is later.

(d) The Department may grant a late request for continuing services when the Department has determined the claimant or the claimant's representative has good cause.

(e) The claimant may be required to pay back any benefits received during the hearing process unless the determination is in the claimant's favor.

(4) INFORMAL CONFERENCE.

(a) The Department representative and the claimant or the claimant's representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the claimant's representative to settle the matter;

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action;

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the contested action;

(E) Give the claimant or the claimant's representative and the Department the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review its action.

(b) A claimant or a claimant's representative may, at any time prior to the hearing date, request an additional informal conference with a Department representative. At the Department representative's discretion, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the relief sought at any time before a final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent their interests during an informal conference and hearing.

(b) Department employees are authorized to appear as a witness on behalf of the Department for hearings.

(c) Hearings are not open to the public. Non-participants may attend the hearing subject to the claimant's or the claimant's representative's consent.

(6) WITHDRAWAL OF HEARING. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the request for withdrawal is received by the Department or the Office of Administrative Hearings (OAH). The Department shall issue the order of withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 working days following the date the order of withdrawal is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request shall be dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The dismissal order shall be effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for good cause.

(8) ORDERS.

(a) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(A) Whether the Department is authorizing OAH to issue a final order, a proposed order, a proposed and final order; and

(B) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing is being referred for an expedited hearing.

(b) FINAL ORDER. The Department shall issue the final order unless the Department authorizes OAH to issue the final order under OAR 137-003-0655. Ordinarily, the final order shall be issued within 90 calendar days of the request for hearing or within 30 calendar days following the receipt of the proposed order or proposed and final order from OAH.

(c) PROPOSED ORDERS. After OAH issues a proposed order, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order under OAR 137-003-0655.

(d) PROPOSED AND FINAL ORDERS. After OAH issues a proposed and final order, the proposed and final order shall become a final order on the 21st calendar day unless:

(A) The claimant or the claimant's representative has filed written exception and written argument as described in subsection (e) of this section;

(B) The Department has issued a revised order; or

(C) The Department has notified the claimant or the claimant's representative and OAH that the Department shall issue the final order.

(e) EXCEPTIONS.

(A) The claimant or the claimant's representative may file written exceptions and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and final order. The written exceptions and written argument must be received at the location indicated in the OAH order not later than the 20th calendar day after service of the proposed order or proposed and final order, unless subsection (a)(B) of this section applies.

(B) When the Department receives timely written exception and written argument as described above, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order in compliance with OAR 137-003-0655.

(f) PETITION OF FINAL ORDER. Within 60 calendar days after a final order is served, a claimant or the claimant's representative may file a petition for reconsideration or rehearing. The petition must be filed with the entity who signed the final order, unless stated otherwise on the final order.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 30-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SPD 8-2012, f. 6-27-12, cert. ef. 6-30-12

Rule Caption: Comprehensive In-Home Support Services for Adults with Developmental Disabilities - Standards for Employers.

Adm. Order No.: SPD 9-2012(Temp)

Filed with Sec. of State: 7-10-2012

Certified to be Effective: 7-10-12 thru 1-6-13

Notice Publication Date:

Rules Adopted: 411-330-0065

Rules Amended: 411-330-0020

Subject: The Department of Human Services (Department) is immediately updating the comprehensive in-home support services rules for adults with developmental disabilities in OAR chapter 411, division 330 to create employer standards for an individual or an indi-

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vidual's representative who is an employer of an independent provider who is paid with public assistance funds through comprehensive in-home support services.

The temporary rulemaking permits the Department to more effectively respond when the Department receives significant complaints against an individual or an individual's representative and to suspend, terminate, or deny an individual or a representative of an individual when determined unable to meet the employer standards and responsibilities.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-330-0020

Definitions

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(3) "Adult" means an individual 18 years or older with developmental disabilities.

(4) "Advocate" means a person other than paid staff who has been selected by an individual with developmental disabilities, or by an individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(5) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(6) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(7) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(8) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their employer to determine wages, hours, rules, and working conditions.

(9) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, Local Mental Health Authority, or other entity as contracted by the Department.

(10) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department or Oregon Health Authority.

(11) "Comprehensive Services":

(a) Mean a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Department alone or in combination with any associated employment or community inclusion program regulated by the Department:

(A) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(B) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(b) Do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports or children's intensive in-home services.

(12) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(13) "Developmental Disability (DD)" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(14) "Director" means the Director of the Department's Office of Developmental Disability Services, or that person's designee. The term "Director" is synonymous with "Assistant Director".

(15) "Employer-Related Supports" mean activities that assist individuals and, when applicable, the individual's legal representatives or family

members, with fulfilling roles and obligations as employers as described in the In-Home Support Plan. Supports to the employer include but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools such as job descriptions;

and

- (d) Fiscal intermediary services.

(16) "Entry" means admission to a Department-funded developmental disability service provider.

(17) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded program to another.

(18) "Family" for determining individual eligibility for in-home support as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one individual with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with developmental disabilities and the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(19) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual who employs persons to provide services, supervision, or training in the home or community according to the individual's In-Home Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or the individual's legal guardians. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(20) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(21) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(22) "Home Care Services" means assistance with activities of daily living, activities of community inclusion, and self-management provided by a home care worker for an elderly person or a person with a disability.

(23) "Immediate Family" means the spouse of an adult for the purposes of determining whether in-home support funds may be used to pay a family member to provide services.

(24) "Incident Report" means a written report of any unusual incident involving an individual.

(25) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(26) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with in-home support funds who personally provides services to the individual.

(27) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(28) "In-Home Support (IHS)" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an In-Home Support Plan.

(29) "In-Home Support (IHS) Plan" means the written details of the supports, activities, costs, and resources required for an individual to

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achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The In-Home Support Plan is developed by the community developmental disability program, the individual, and the individual's legal representative (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The In-Home Support Plan is the individual's Plan of Care for Medicaid purposes.

(30) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals with developmental disabilities in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with persons in their community.

(31) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(32) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The Board of Directors of a public or private corporation if the county declines to operate a contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

(33) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(34) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(35) "Nursing Care Plan" means a plan developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(36) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

(37) "Person-Centered Planning":

(a) Means a process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals and lifestyle preferences; and

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(38) "Personal Support Worker":

(a) Means a person:

(A) Who is hired by an individual with a developmental disability or a guardian or representative of an individual with a developmental disability;

(B) Who receives money from the Department for the purpose of providing services to the individual with a developmental disability;

(C) Whose compensation is provided in whole or in part through the Department or Community Developmental Disability Program; and

(D) Who provides home care services in the home or community.

(b) This definition of personal support worker is intended to reflect the term as defined in ORS 410.600.

(39) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(40) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(41) "Provider" means a person, organization, or business that is selected by an individual or the individual's legal representative and paid with in-home support funds to provide support according to the individual's In-Home Support Plan.

(42) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(43) "Representative" means a person an individual or an individual's legal representative selects to act as employer as described in OAR 411-330-0065 for the purposes of obtaining in-home support through independent providers.

(44) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(45) "Social Benefit" or "Social Service" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home or in the family home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan (ISP); or

(B) An advance payment in anticipation of an expense authorized in a previously authorized ISP.

(46) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(47) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(48) "These Rules" mean the rules in OAR chapter 411, division 330.

(49) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the

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services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(50) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the community developmental disability program.

(51) "Volunteer" means any person assisting a provider without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13

411-330-0065

Standards for Employers

(1) EMPLOYER RESPONSIBILITIES.

(a) To be eligible for in-home support provided by an independent provider, an individual must demonstrate ability to, or designate a representative who has ability to:

(A) Locate, screen, and hire a qualified independent provider;

(B) Supervise and train the independent provider;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the independent provider;

(E) Recognize, discuss, and attempt to correct, with the independent provider, any performance deficiencies;

(F) Comply with all state and federal wage and hour and labor laws, including but not limited to:

(i) Workers compensation insurance for eligible independent providers; or

(ii) Unemployment insurance for eligible independent providers;

(G) Comply with the Collective Bargaining Agreement for an independent provider identified as a personal support worker; and

(H) Discharge an unsatisfactory independent provider.

(b) Individuals who have demonstrated, after intervention and assistance, that they are unable to meet the responsibilities in subsection (1)(a) of this section, may be determined ineligible for in-home support provided by an independent provider.

(c) Individuals determined to be ineligible for in-home support provided by an independent provider must designate a representative as described in section (2) of this rule.

(d) An individual must designate a different representative or select other available services as described in subsection (1)(f) of this section if the individual's designated representative is unable to meet the employer responsibilities in subsection (1)(a) of this section.

(e) Individuals determined ineligible for in-home support provided by an independent provider and unable to find a representative as described in section (2) of this rule may request in-home support provided by an independent provider at the individual's next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet employer responsibilities. If an individual is able to demonstrate the ability to meet employer responsibilities sooner than the next annual ISP, the waiting period may be shortened.

(f) Individuals ineligible for in-home support provided by an independent provider shall be offered other available service options that meet the individual's service needs, including in-home support through a contracted qualified provider organization or general business provider when possible. As an alternative to in-home support, the Department or the Department's designee may offer other available services in the Home and Community Based Services Waiver.

(2) REPRESENTATIVE.

(a) An individual may designate a representative who meets the employer responsibilities in section (1)(a) of this rule on their behalf.

(b) Individuals with guardians must have a representative for service planning purposes. Guardians may designate themselves the representative.

(c) Guardians who are also an individual's provider of in-home support must seek another representative for purposes of their employment. The representative must be able to meet the employer responsibilities in section (1)(a) of this rule.

(d) The Department or the Department's designee may suspend, terminate, or deny an individual's request for any representative and the individual shall be given the option to select another representative when the representative has:

(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 through 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Engaged in Medicaid Fraud;

(D) Been convicted of a crime described in OAR 407-007-0275; or

(E) Failed to meet the employer responsibilities in section (1)(a) of this rule.

(3) APPEALS.

(a) If the Department or the Department's designee makes a decision to deny, suspend, or terminate an individual or an individual's representative from performing the employer responsibilities described in section (1)(a) of this rule, the Department or the Department's designee shall notify the individual and the individual's representative, if applicable, of the denial by mail. The individual or the individual's representative may appeal this action within 30 calendar days of the notice.

(b) An individual receiving in-home support or an individual's representative may appeal a notice by requesting an administrative review by the Department's Director of developmental disability services or the Director's designee.

(c) For an appeal regarding denial, suspension, or termination of an individual or an individual's representative to be valid, written notice of the appeal must be received by the Department within 30 calendar days of the date the notice was mailed to the individual.

(d) At the discretion of the Department, an individual or an individual's representative who has previously been denied, suspended, or terminated from employer responsibilities described in section (1)(a) of this rule may not be authorized as employers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13

Department of Justice Chapter 137

Rule Caption: Fees for Public Records.

Adm. Order No.: DOJ 7-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 5-1-2012

Rules Amended: 137-008-0010

Subject: Amends fees chargeable by the Department of Justice for responding to public records requests to reflect the current billing rates underlying the department's budget. Those rates are described in LFO Analysis of 2011-13 Legislatively Adopted Budget, available at http://www.leg.state.or.us/comm/lfo/2011-13/2011-13_lab_publicsafety.pdf or from the Legislative Fiscal Office.

Rules Coordinator: Carol Riches—(503) 947-4700

137-008-0010

Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter for black and white copies and 70¢ per page for the first 20 pages and 60¢ per page thereafter for color copies to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

(a) Assistant Attorney General: \$143/hr;

(b) Alternative Dispute Resolution Coordinator: \$93/hr;

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- (c) Investigator: \$108/hr;
- (d) Paralegal or Information Technology Staff: \$79/hr;
- (e) Law Clerk: \$39/hr;
- (f) General Clerical: \$47/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents. The Department shall not charge for time spent by Assistant Attorneys General in determining the application of the provisions of ORS 192.410 to 192.505.

(3) The Department shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed \$25, the Department shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the Department to proceed with making the public records available. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

- (a) Attorney General's Public Law Conference Papers: \$65;
 - (b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA: \$65;
 - (c) Attorney General's Public Contracts Manual: \$65;
 - (d) Attorney General's Public Records and Meetings Manual: \$25;
 - (e) Attorney General Opinions:
 - (A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index: \$921;
 - (B) Future Bound Volumes: \$70;
 - (C) Slip Opinion Service (yearly): \$60;
 - (D) Letters of Advice Index, 1969-83: \$20;
 - (E) Letters of Advice Index, 1983-88: \$40;
 - (F) Letters of Advice Index, 1988-93: \$40;
 - (G) Future Letters of Advice Indices: \$40.
 - (f) Core Mediation Training Manual: \$95.
- Stat. Auth.: ORS 192.430(2) & 192.440(4)
Stat. Implemented: ORS 192.440(4)
Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04; DOJ 13-2004(Temp), f. & cert. ef. 11-1-04 thru 1-31-05; DOJ 1-2005, f. & cert. ef. 1-13-05; DOJ 2-2005, f. & cert. ef. 2-1-05; DOJ 15-2005(Temp), f. & cert. ef. 11-2-05 thru 4-29-06; DOJ 21-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 8-2008, f. 4-29-08, cert. ef. 5-1-08; DOJ 11-2009, f. & cert. ef. 9-8-09; DOJ 7-2012, f. 6-27-12, cert. ef. 7-1-12

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Rule Caption: Amends Attorney General's Model Public Contract Rules, Divisions 46, 47, and 48.

Adm. Order No.: DOJ 8-2012

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Rules Adopted: 137-046-0252, 137-046-0330, 137-047-0560

Rules Amended: 137-046-0300, 137-047-0640, 137-047-0670, 137-047-0800, 137-048-0130, 137-048-0220

Subject: Changes to the Attorney General's model public contract rules applicable to state and local contracting agencies respond to 2012 legislation and clarify, improve and correct the rules. The changes implement Senate Bill 1518 by authorizing state contracting agencies to solicit and consider bidders' and proposers' personnel employment disclosures, and to grant preferences in favor of the bid or proposal that states that the bidder or proposer will employ more workers within this state in contracts for goods and services. The changes also implement Senate Bill 1518 by describing circumstances under which a personal services contractor who assisted a state contracting agency in developing a solicitation document or specifications for a contract for goods or services, or the contractor's affiliate, should be disqualified from bidding or proposing on that contract. The changes implement Senate Bill 1556 by authorizing state and local contracting agencies to apply a preference in

favor of a bidder or proposer whose bid or proposal for a Federal Transit Administration transit project contract exceeds federal Buy America requirements. The changes provide that for purposes of determining if an amendment to a state or local contracting agency's contract or price agreement for goods or services is within the scope of the procurement, the scope is described in the solicitation documents, sole source notice, or the approved special procurement, not in the contract. With respect to selection procedures for consultants providing architectural, engineering and land surveying services and related services, the changes: i) except from qualifications-based selection procedures selections of consultants providing services not exceeding \$100,000 and in emergencies), ii) clarify the information that a contracting agency may consider in directly appointing a consultant, iii) remove the requirement to comply with consultant selection procedures for services associated with legal claims due to a conflict with ORS 279A.025(2)(e), and iv) update language pertaining to energy technology requirements in response to Senate Bill 1533. The changes also make other non-substantive corrections.

Rules Coordinator: Carol Riches—(503) 947-4700

137-046-0252

Personnel Employment Disclosure and Preference — State Agency Contracts for Goods or Services

(1) As authorized by subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a state contracting agency may state, in its Solicitation Documents for a procurement of goods or services, that the state contracting agency will consider, and award a preference based on, personnel deployment disclosures submitted by bidders or proposers in response to the solicitation.

(2) A state contracting agency may not reject a bidder or proposer on the ground that it submitted a non-responsive bid or proposal solely due to the bidder's or proposer's failure to submit a personnel employment disclosure. However, the state contracting agency may not apply the preference authorized by subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) in favor of a bidder or proposer that fails to submit a complete and accurate personnel disclosure form with its bid or proposal on or before the date and time bids or proposals are due.

(3) To qualify for the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a bidder's or proposer's personnel deployment disclosure form must state:

(a) The number of workers the bidder or proposer and the bidder's or proposer's subcontractors will, if awarded a contract, deploy to perform the overall contract work described in the Solicitation Documents.

(b) The number of workers the bidder or proposer and the bidder's or proposer's first-tier subcontractors will, if awarded a contract, employ in this state to perform contract work described in the Solicitation Documents.

(c) The number of jobs to be held by workers employed by the bidder or proposer and by the bidder's or proposer's subcontractors to perform the contract work described in the Solicitation Documents that will be newly created jobs that result from the award of the contract.

(d) The duration of the work of any workers (stated in number of work days) who will be employed in this state to perform contract work described in the Solicitation Documents for all workers (including workers of first-tier subcontractors) for whom the work duration will not be as long as the initial term of the contract.

(e) The rates of pay of all reported workers (including workers of first-tier subcontractors), described either individually, by position, or by job classification, who will be employed in this state to perform contract work described in the Solicitation Documents.

(4) To qualify for the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a bidder or proposer must make a promise in its bid or proposal to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. If awarded a contract, a bidder or proposer must commit, in the contract, to ensure that the deployment of workers will comply, in terms of worker positions, duration of the work, and the location of the employment of workers, with the personnel deployment disclosure submitted with its bid or proposal. In the contract, the contractor must agree to pass this obligation to all first-tier subcontractors.

(5) A state contracting agency may require a contractor under a contract awarded with the application of the preference under subsection 6(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518) to submit, on a month-

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ly or other periodic basis, the contractor's certification of its employment of workers and its first-tier subcontractors' workers) within this state in accordance with the contractor's personnel deployment disclosure.

(6) A state contracting agency may give a preference of not more than ten percent to a bid or proposal that states that the bidder or proposer (and its first-tier subcontractors) will employ more workers within this state than competing bidders or proposers. In determining the bidder or proposer who will employ more workers within this state, the state contracting agency may take the rates of pay and the duration of the work into account by averaging the rates of pay for all disclosed in-state work positions and averaging the duration of the in-state work positions among all disclosed in-state work positions. Before granting the preference to a bid or proposal, the agency must determine that the competing proposals otherwise suit the state agency's specifications for the procurement equally well.

(7) In applying the preference, a state contracting agency must achieve fairness by assigning a standard work-deployment period for each solicitation that does not exceed the duration of the initial term of any contract awarded with the application of the preference, or in project completion-based contracts, does not exceed the probable duration of the project work exclusive of a contractor's performance of warranty work and maintenance.

(8) Where a state contracting agency determines that a personnel deployment disclosure unreasonably or unrealistically overstates the number of workers a bidder or proposer (and first-tier subcontractors) will employ within this state, the state contracting agency may reject the bid or proposal on grounds of bidder or proposer non-responsibility, or in a proposal situation, may deduct proposal evaluation points.

Stat. Auth.: ORS 279A.065

Stats. Implemented: 2012 OL, ch 53

Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-046-0300

Preference for Oregon Goods and Services

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Offers are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best

serve the interests of the Contracting Agency in accordance with 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. In applying Section 1 of this rule, Contracting Agencies shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured, produced, or performed in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065; OL 2011, ch 237

Stats. Implemented: ORS 279A.065; 279A.120 & 279A.128; OL 2011, ch 237

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-046-0330

Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

(1) A contracting agency, in its Solicitation Documents to award a contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, may provide for the application of a preference in favor of an Offeror whose bid or proposal exceeds the applicable federal Buy America requirements.

(a) A contracting agency has discretion to adjust the amount or character of the preference to account for variations in the nature of the contract or project, and the degree to which each Offeror's bid or proposal exceeds the federal Buy America requirements.

(b) For example, in an invitation to bid procurement the contracting agency may authorize a range of preference price percentages to account for the various degrees to which the bidders might exceed the federal Buy America requirements. In no event, however, may the percentage preference given to a bidder exceed ten percent of the total bid price.

(c) Similarly, under a request for proposals, the contracting agency may allocate and award evaluation points to reflect the degrees to which the proposers might exceed the applicable federal Buy America requirements. In no event, however, may those percentage points exceed ten percent of the total number of points available for award under the request for proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: 2012 OL, ch 58

Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0560

Personal Services Contract to Provide Specifications — State Agency Disqualification as Bidder or Proposer

(1) For the purposes of subsection 2(1) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's

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affiliate), would have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) The specifications recommended by the personal service contractor for the sequence of services, incorporation of special service or fabrication techniques, or design of any goods or components or elements of goods that the state contracting agency published in its solicitation documents call for, expressly or implicitly, requirements that only the personal services contractor (or the contractor's affiliate), or a limited class of individuals in the contractor's area of specialty, have the ability to perform or produce or have the rights to perform or produce.

(b) The rendering of solicitation document development assistance under the personal services contract gives the contractor knowledge of the state contracting agency's special needs or procedures, not generally known to the public, that give the contractor (or the contractor's affiliate) a material competitive advantage in competing for the contract for goods or services.

(c) The rendering of solicitation document development assistance under the personal services contract gives the contractor, significantly in advance of other prospective bidders or proposers, knowledge of the solicitation document requirements that would allow the personal services contractor (or the contractor's affiliate) a materially longer period in which to craft or refine a proposal in response to the solicitation documents.

(2) For the purposes of subsection 2(1) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate) would appear to have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a limited class of individuals in the contractor's area of specialty, appear to have the capability to conform closely with the solicitation document requirements.

(b) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a severely limited class of individuals in the contractor's area of specialty, appear to have the qualifications, training, experience or capacity to satisfy any minimum requirements that may be stated in the solicitation documents.

(c) The solicitation documents for a contract for goods or services contain restrictions, deadlines or requirements that do not, when viewed objectively, reasonably promote rational procurement objectives of the state contracting agency.

(3) If a state contracting agency engages a personal services contractor to advise or assist in the development of solicitation documents for a public contract for goods or services and the personal services contractor is engaged in the business of providing goods or services described in the solicitation documents, and the agency wishes to accept a bid or proposal from the personal services contractor under conditions described in section (2) or section (3) of this rule, the agency must apply to the Director of the Department of Administrative Services, as permitted by subsection 2(2) of Oregon Laws 2012, chapter 53 (Senate Bill 1518), for an exemption from the disqualification from the ability to submit a bid or proposal.

Stat. Auth.: ORS 279A.065

Stats. Implemented: 2012 OL, ch 53

Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0640

Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 137-046-0210(3) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100 & 279B.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

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137-047-0670

Disposition of Offers if Procurement or Solicitation Canceled

(1) Prior to Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

(a) May return Proposals in accordance with ORS 279B.060(56)(c); and

(b) Shall keep Bids in the Procurement file.

(3) Rejection of All Offers. If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-047-0800

Amendments to Contracts and Price Agreements

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed the amount set forth in OAR 137-047-0265 for small Procurements or 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-048-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation

Planning or Land Surveying Services, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies selecting a Consultant under this section (1) may solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure; provided, however, this restriction on a Contracting Agency's solicitation or use of pricing policies, pricing proposals or other pricing information does not apply to selection procedures used by the Contracting Agency to select a Consultant when the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services for the Project do not exceed \$100,000 or in an Emergency, pursuant to ORS 279C.0110(8) and (9). In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

(2) Contracting Agencies selecting Consultants to perform Related Services shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Bids, or 137-048-0200 (Direct Appointment Procedure) if the requirements of 137-048-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Proposals, or 137-048-0200 (Direct Appointment Procedure) if the requirements of 137-048-0200(1) apply. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of OAR 137-048-0270 (Price Agreements).

(4) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, the Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other

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Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and divisions 46, 47 and 49 of the Model Rules that match the predominant purpose of the Contract.

(6) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(7) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under 137-048-0270 (Price Agreements).

(b) For purposes of proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while a Contracting Agency may make proposals under 137-048-0200 (Direct Appointment Procedure) open for public inspection following the Contracting Agency's decision to begin Contract negotiations with the selected Consultant, 137-048-0200 proposals are not required to be open for public inspection until after the Contracting Agency has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agencies may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agencies may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant; and

(d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(8) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(9) The requirements of ORS 279C.307 and section (8) of this rule apply in the following circumstances, except as provided in section (10) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (9)(a) of this rule.

(10) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in OAR 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

137-048-0220

Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (b) of this section, a Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) A Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) A Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

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(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) A Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(K) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(L) Consultants' ability to assist a Contracting Agency in complying with the energy technology requirements of ORS 279C.527 and 279C.528; and

(M) Any other information the Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) A Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Contracting Agency shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the Contracting Agency's minimum requirements, then:

(A) The Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.

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(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(xiii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the Contracting Agency the results of the scoring and ranking for each Proposer.

(c) If the Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(d) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable

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amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, 279C.527, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

Rule Caption: Child support guidelines self-support reserve amount.

Adm. Order No.: DOJ 9-2012

Filed with Sec. of State: 7-2-2012

Certified to be Effective: 7-2-12

Notice Publication Date: 5-1-2012

Rules Amended: 137-050-0745

Subject: OAR 137-050-0745 is amended to update the self-support reserve amount.

Rules Coordinator: Lori Woltring—(503) 947-4367

137-050-0745

Self-Support Reserve

(1) A support calculation must ensure that a parent being ordered to pay support is left with enough income to meet his or her own basic needs. This is known as the Self Support Reserve and is determined as follows:

(a) Determine the parent's adjusted income as provided in OAR 137-050-0715;

(b) Calculate the parent's income available for support by subtracting a self-support reserve of \$1086 from the parent's adjusted income;

(c) Compare the amount of income available for support to the amount of support that was calculated under OAR 137-050-0710(8). The lesser of the two amounts is presumed to be the correct support amount.

(2) Any available income remaining after application of the self-support reserve in step (1)(c) is the income available for medical support.

(3) This rule does not apply to an incarcerated obligor as defined in OAR 137-055-3300.

(4) The amount of the self-support reserve (SSR) is based on the federal poverty guideline (FPG), and is adjusted to account for estimated taxes using a 1.167 multiplier (SSR = FPG x 1.167). The self-support reserve amount will be reviewed and updated annually.

Stat. Auth.: ORS 25.275, 25.280 & 180.345
Stats. Implemented: ORS 25.275 & 25.280
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 1-2011(Temp), f. & cert. ef. 1-26-11 thru 7-24-11; DOJ 5-2011, f. & cert. ef. 7-1-11; DOJ 9-2012, f. & cert. ef. 7-2-12

Rule Caption: Adopts Rules Required by 2012 Legislation to Implement Foreclosure Avoidance Mediation Program.

Adm. Order No.: DOJ 10-2012(Temp)

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 7-11-12 thru 1-6-13

Notice Publication Date:

Rules Adopted: 137-110-0001, 137-110-0005, 137-110-0010, 137-110-0020, 137-110-0110, 137-110-0200, 137-110-0210, 137-110-0410, 137-110-0420, 137-110-0430, 137-110-0500, 137-110-0510, 137-110-0520, 137-110-0600, 137-110-0610, 137-110-0620, 137-110-0630, 137-110-0640, 137-110-0650, 137-110-0660, 137-110-0670

Subject: These rules implement the Foreclosure Avoidance Mediation Program established by Oregon Laws 2012, chapter 112. These rules provide:

- The accepted methods for providing statutorily-required notice to the Attorney General;

- The minimum training, qualifications and experience required of program mediators;

- The fees that must be paid by the parties, the timing of fee payments, and the requirements for obtaining a waiver by low-income grantors;

- The form for, and contents of, the notice of mediation that must be created by certain beneficiaries seeking non-judicial foreclosure;

- The form for, and contents of, the mediation scheduling notice issued by the program's mediation service provider;

- The form for, and contents of, an affidavit exempting a grantor from the requirement to see a housing counselor within a certain timeframe;

- The mediation guidelines that provide for the role of program mediators; documents required of both parties and the schedule for providing those documents; procedures for rescheduling or adjourning mediation sessions; confidentiality provisions; role of interpreters; means of executing agreements; and the procedure for providing a certificate of compliance to the beneficiary and the contents of that certificate.

Rules Coordinator: Carol Riches—(503) 947-4700

137-110-0001

Purpose

These division 110 rules govern the foreclosure avoidance mediation program created by Oregon Laws 2012, chapter 112.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2), 2(5), 2(7), 2a(3), 3 & 4a(4)
Stats. Implemented: 2012 OL Ch. 112
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0005

Application

These division 110 rules apply to any mediation resulting from the issuance of a notice of mediation by a beneficiary seeking to foreclose a residential trust deed pursuant to ORS 86.735 and to an at-risk grantor's request to enter into foreclosure avoidance mediation with respect to a residential trust deed.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5) & 2(7)
Stats. Implemented: 2012 OL Ch. 112
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0010

Definitions

As used in these division 110 rules, unless a specific rule provides otherwise for purposes of that rule:

(1) "Date of mediation" means the date of the mediation session with the beneficiary or the beneficiary's agent and a mediator and grantor present.

(2) "Foreclosure Avoidance Mediation Program" means the mediation program established under Oregon Laws 2012, chapter 112.

(3) "Foreclosure avoidance mediation roster" means the roster of qualified mediators maintained by the mediation service provider.

(4) "Housing counselor" means an individual or entity offering guidance on home buying, renting, reverse mortgages and default and foreclosure prevention

(5) "Mediation" means a process undertaken under the Foreclosure Avoidance Mediation Program in which a mediator assists and facilitates the grantor and beneficiary in attempting to reach a mutually acceptable resolution of a controversy involving a residential trust deed loan and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties. Mediation begins with the first contact between a grantor or beneficiary and the mediation service provider and concludes when an agreement is reached between the grantor and the beneficiary or, in the event an agreement is not reached, with the issuance of a certificate of compliance by the mediation service provider or the closure of the case by the mediation service provider without the issuance of a certificate of compliance.

(6) "Mediation agreement" means an agreement arising out of a mediation, including any term or condition of the agreement.

(7) "Mediation communications" means:

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(a) All communications that are made in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or submitted by a mediator, the mediation service provider or a party to, or any other person present at, a mediation session.

(8) "Mediation program" means a community dispute resolution program, mediator organization or the mediation service provider through which mediation is made available under the Foreclosure Avoidance Mediation Program and includes the director, agents and employees of the Foreclosure Avoidance Mediation Program.

(9) "Mediation service provider" means the entity appointed by the Attorney General pursuant to Oregon Laws 2012, chapter 112, section 2.

(10) "Mediation session" means a meeting involving the mediator, the grantor and the beneficiary or its representatives.

(11) "Mediator" means a third party who performs mediation within the Foreclosure Avoidance Mediation Program.

(12) "Party" means the grantor, the beneficiary and the beneficiary's agent if the beneficiary authorizes the agent to appear on the beneficiary's behalf at mediation.

Stat. Auth.: OL 2012, ch 112, sec 2(2), 2(5), 2(7), 2a(3), 3, and 4a(4)
Stats. Implemented: OL 2012, ch 112
Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5) & 2(7)
Stats. Implemented: 2012 OL Ch. 112
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0020

Notice to Attorney General

For the purposes of these division 110 rules and the Foreclosure Avoidance Mediation Program, any requirement or option to mail a copy of a notice to or otherwise notify the Attorney General may be met through either one of the following means:

(1) By U.S. mail addressed to Attorney General of Oregon, Foreclosure Avoidance Mediation Program, 1162 Court St. NE, Salem, OR 97301-4096; or

(2) By electronic mail addressed to DOJ@foreclosuremediation. OR.org. Electronic mail notifications may be accomplished using the web-based computer program provided by the mediation service provider to the extent that such functionality is available for a particular notice or form.

Stat. Auth.: 2012 OL Ch. 112, Sec. 4a(4)
Stats. Implemented: 2012 OL Ch. 112, Sec. 4a(2), (3) & (4)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0110

Mediator Qualifications, Training and Experience

(1) For purposes of this rule only:

(a) "Mediation" means a process in which a mediator assists and facilitates two or more parties to any controversy in attempting to reach a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated; and

(b) "Mediator" means a third party who performs mediation.

(2) A mediator conducting a mediation under the Foreclosure Avoidance Mediation Program shall:

(a) Have conducted at least 20 mediations of any type or subject matter as a mediator. Work performed as an assistant or apprentice mediator under the supervision of a lead mediator may also be counted toward the 20 mediation requirement;

(b) Provide evidence of at least 100 hours of mediation experience as a mediator or as an assistant or apprentice mediator. Work that a mediator performs to prepare for and schedule the mediation or to prepare the parties for a mediation session, may be counted towards this 100 hour requirement;

(c) Disclose to the mediation service provider the professional standards to which the mediator subscribes;

(d) Have successfully participated in at least 30 hours of training that is consistent with the curriculum found in Section 3.2 of the Oregon Judicial Department Court Connected Mediator Qualification Rules effective August 1, 2005;

(e) Demonstrate that the mediator is familiar with ORS 36.110 to 36.238;

(f) Provide evidence of successful participation in at least 16 hours of training on the substantive law and legal processes regarding foreclosures in Oregon including ORS Chapter 86; and

(g) Provide evidence of successful participation in at least 8 hours of training on the procedures, practices and policies of the Foreclosure Avoidance Mediation Program. This training shall include some interactive instruction, such as role-playing.

(3) The mediation service provider may grant a waiver from the training requirements in subsections 2(d) and (f) of this rule upon a showing by the mediator of significant and related education or experience.

(4) The mediation service provider shall decide whether or not an individual:

(a) Meets the minimum qualifications as a mediator under these rules;

(b) Is included on the foreclosure avoidance mediation roster; or

(c) Is assigned to a mediation.

(5) An individual who meets the minimum qualifications as a mediator under these rules or who is added to the foreclosure avoidance mediation roster may not represent that fact as license or certification of their competency for anything other than their role in the Foreclosure Avoidance Mediation Program.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(b)(B)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(2)(b)(B)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0200

Fees Paid by the Grantor, Fee Waiver

(1) In mediations initiated in connection with a notice of default, the grantor shall pay a fee of \$200 to the mediation service provider at the time the grantor confirms his or her participation in the mediation as required by Oregon Laws 2012, chapter 112, Section 2(3)(c). If there are joint or multiple grantors, only one grantor needs to pay this fee.

(2) In mediations initiated at the request of an at-risk grantor, the grantor shall pay a fee of \$200 to the mediation service provider at the time the grantor confirms his or her participation in the mediation as required by Oregon Laws 2012, chapter 112, Section 2(3)(c). If there are joint or multiple grantors, only one grantor must pay this fee.

(3) The grantor may apply for a waiver of \$150 of the fees described in sections (1) and (2) of this rule at the time the grantor confirms his or her participation in the mediation as required by Oregon Laws 2012, chapter 112, Section 2(3)(c). The grantor shall pay a \$50 fee at the time of requesting a fee waiver.

(4) A grantor's application for a fee waiver under section (3) of this rule shall be granted if the grantor is able to provide satisfactory evidence to the mediation service provider that the grantor's annual household income is less than:

- (a) \$ 22,340 for a household of one;
- (b) \$ 30,260 for a household of two;
- (c) \$ 38,180 for a household of three;
- (d) \$ 46,100 for a household of four;
- (e) \$ 54,020 for a household of five;
- (f) \$ 61,940 for a household of six;
- (g) \$ 69,860 for a household of seven;
- (h) \$ 77,780 for a household of eight;
- (i) \$ 85,700 for a household of nine; or
- (j) \$ 93,620 for a household of ten or more.

(5) If the mediation service provider denies a grantor's application for a fee waiver made under section (3) of this rule, the grantor shall pay the remaining \$150 within 15 days of receiving the mediation service provider's determination not to grant a fee waiver but never later than the date of the scheduled mediation session.

(6) A grantor who fails to timely pay fees will be considered to have declined mediation. Failure by a grantor to timely pay fees will result in cancellation of the mediation session.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(b)(C) & 2(2)(c)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(2)(b)(C) & 2(2)(c)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0210

Fees Paid by Beneficiary

(1) In mediations initiated in connection with a notice of default, the beneficiary or the beneficiary's agent shall pay a total mediation fee of \$425 to the mediation service provider. The beneficiary shall pay \$200 of that fee at the time of serving or mailing the notice of mediation. The beneficiary shall pay the remaining \$225 prior to the scheduled mediation session.

(2) In mediations initiated at the request of an at-risk grantor, the beneficiary or the beneficiary's agent shall pay a total mediation fee of \$500 to the mediation service provider. The beneficiary shall pay \$200 of that fee at the time the beneficiary notifies the mediation service provider of the grantor's request for mediation pursuant to Oregon Laws 2012, chapter

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112, Section 2(7). The beneficiary shall pay the remaining \$300 prior to the scheduled mediation session.

(3) A junior lienholder that participates in a mediation shall pay the fee stated in section (1) of this rule.

(4) A beneficiary that is otherwise exempt from mediation pursuant to Oregon Laws 2012, chapter 112, section 2(2)(d) may participate in mediation by paying the fees described in section (1) of this rule and by following the mediation guidelines set forth in OAR 137-110-0600 to 137-110-0670.

(5) Failure by a beneficiary to timely pay fees will result in cancellation of the mediation session.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(b)(C)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(2)(b)(C)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0410

Beneficiary Requirements

(1) Unless exempt under Oregon Laws 2012, chapter 112, Section (2)(2)(d), a beneficiary filing a notice of default pursuant to ORS 86.735 on a residential trust deed shall:

(a) Provide a notice of mediation to the grantor and the mediation service provider at least 60 days before serving or mailing the notice of sale described in ORS 86.740(1)(a).

(b) Include the following contents in the notice of mediation:

(A) List the last known name, address, telephone number and other contact information for the grantor or other person named in the residential trust deed;

(B) Specify the account number or other means by which the beneficiary or trustee or an agent of the beneficiary or trustee identifies the obligation that is secured by the residential trust deed;

(C) Provide the address, telephone number and other contact information for:

(i) The beneficiary or an agent of the beneficiary that the beneficiary authorizes to negotiate on the beneficiary's behalf;

(ii) The Oregon State Bar's Lawyer Referral Service;

(iii) Service agencies or other providers that offer free or low-cost legal services from a list of agencies or providers that the Attorney General adopts by rule; and

(iv) A list of not-for-profit housing counselors approved by the United States Department of Housing and Urban Development or an agency of this state compiled by the Oregon Housing and Community Services agency;

(D) State that the grantor must consult with a housing counselor approved by the United States Department of Housing and Urban Development. State that the grantor may choose to have an attorney or United States Department of Housing and Urban Development-approved housing counselor represent the grantor at the mediation;

(E) State that the beneficiary is required to enter into mediation with the grantor for the purpose of negotiating a foreclosure avoidance measure;

(F) Contain a brief, plain language description of the foreclosure avoidance measures offered by the beneficiary or the beneficiary's agent or a description of the foreclosure avoidance measures described in section 2(1) of Oregon Laws 2012, chapter 112;

(G) List the documents the grantor is required to bring pursuant to OAR 137-110-0620;

(H) State the fees associated with mediation and specify the maximum cost for which the grantor will be responsible;

(I) State that the mediation and mediation communications, as defined in ORS 36.110, are confidential in accordance with and to the extent provided in ORS 36.220 to 36.238;

(J) State that within 30 days after the date of the notice a mediation service provider will send another notice to the grantor with a date, time and location for the mediation and other requirements of Oregon law.

(2) The notice required by section (1) of this rule:

(a) Shall be served on the mediation service provider in the manner prescribed by ORS 86.740. However, the mediation service provider shall accept service if the notice is submitted using a web-based computer program provided by the mediation service provider and the provider acknowledges its actual receipt of the notice by electronic mail or confirmation generated within the provider's web-based computer program.

(b) Shall substantially comply with the model form provided in Appendix A to these Division 110 rules and available as "Form 410" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(3) The beneficiary shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 3

Stats. Implemented: 2012 OL Ch. 112, Sec. 3

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0420

Mediation Service Provider Requirements

(1) Within 30 days after the date on which the beneficiary caused a notice of mediation to be served or mailed as provided in ORS 86.740, the mediation service provider shall send a mediation scheduling notice to the grantor and beneficiary. The mediation scheduling notice must:

(a) State the date, time and location of the scheduled mediation session;

(b) Identify and provide contact information for the mediation service provider;

(c) Provide a date at least 30 days before the scheduled mediation by which the grantor shall contact the mediation service provider to confirm that the grantor will enter into mediation and pay fees. The notice shall conspicuously state that failure to confirm participation and pay applicable fees by the specified date will be deemed refusal to participate by the grantor;

(d) State the fees associated with mediation;

(e) Provide the address, telephone number and other contact information for a list of not-for-profit housing counselors approved by the United States Department of Housing and Urban Development and other housing counselors compiled by the Oregon Housing and Community Services Department;

(f) State that the grantor must consult with a housing counselor approved by the United States Department of Housing and Urban Development;

(g) List the documents each party shall bring to mediation; and

(h) Provide contact information for low cost legal service providers and the Oregon State Bar.

(2) The notice required by section (1) of this rule shall substantially comply with the model form provided in Appendix B to these Division 110 rules and available as "Form 420" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(2)(3)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(3)

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0430

Grantor Requirements

If the grantor wishes to participate in mediation, the following requirements apply:

(1) On or before the date specified by the mediation service provider in its mediation scheduling notice, the grantor shall confirm with the mediation service provider that the grantor wishes to enter into mediation.

(2) The grantor shall attend housing counseling with a United States Department of Housing and Urban Development approved housing counselor prior to the mediation session.

(3) The requirement in section (2) of this rule does not apply if the grantor notifies the mediation service provider that the grantor has been unable to obtain an appointment to consult with a qualified housing counselor within 30 days after receiving the notice of mediation and executes an affidavit including:

(a) The name of the grantor;

(b) The name of the beneficiary;

(c) The address of the property; and

(d) A statement that the grantor of the named property has been unable to obtain an appointment to consult with a qualified housing counselor within 30 days after receiving the notice of mediation.

(4) The affidavit described in section (3) shall substantially comply with the model form provided in Appendix C to these Division 110 rules and available as "Form 430" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(5) The grantor shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(3) & 2a(3)

Stats. Implemented: 2012 OL Ch. 112, Sec. 2(3) & 2a

Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0500

Grantor Requirements

(1) A grantor who is at risk of default may request mediation with the beneficiary using the paper or web-based computer form available for this purpose from the mediation service provider. The grantor must deliver this request to the beneficiary or trustee or the beneficiary's agent or trustee's agent.

(2) A grantor that requests mediation under section (1) of this rule may notify the mediation service provider and the Attorney General of the request. A request for mediation made using the web-based computer form

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available from the mediation service provider shall be considered sufficient notice to the mediation service provider and the Attorney General.

(3) A grantor shall attend housing counseling with a United States Department of Housing and Urban Development-approved housing counselor prior to the mediation session.

(4) The grantor shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5) & 2(7)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0510

Beneficiary or Trustee Requirements

(1) Within 15 days of receiving a request for mediation from an at-risk grantor, the beneficiary or trustee or the beneficiary's or trustee's agent shall respond to the grantor's request, and this response shall include contact information for the Attorney General and the mediation service provider.

(2) Within 15 days of receiving a request for mediation from an at-risk grantor, the beneficiary or trustee or the beneficiary's or trustee's agent shall notify the Attorney General and the mediation service provider of the grantor's request and the beneficiary's response by:

- (a) Mailing notice to the mediation services provider; or
- (b) By electronic means using the web-based computer program provided by the mediation service provider.

(3) At the time of providing the notice required by section (2) of this rule, the beneficiary shall pay the fee required by OAR 137-110-0210(2).

(4) The beneficiary shall comply with the mediation guidelines set out in OAR 137-110-600 to 137-110-670.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5) & 2(7)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0520

Mediation Service Provider Requirements

Within 10 days after receiving a beneficiary's notification of a request for mediation by an at-risk grantor, the mediation service provider shall send a mediation scheduling notice to the grantor and the beneficiary that, with the exception of the deadline by which such notice must be sent out, complies with the requirements of OAR 137-110-420.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(3) & 2(7)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(3) & 2(2)(7)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0600

Mediator Authority and Role

(1) The mediator has no authority to impose a settlement on the grantor or the beneficiary or to render any decisions on any substantive issue or make any legal determinations.

(2) The mediator may rely on assertions made in the documents provided by the parties and need not make an independent inquiry into the proper chain of title or any other matter.

(3) The mediator shall:

(a) Act as an impartial intermediary and not as an advocate for the beneficiary or the grantor;

(b) Make appropriate disclosures to the parties about the mediator's skills and the specific mediation approaches the mediator uses;

(c) Support the ability of the parties to make informed decisions regarding the mediation process and outcomes by ensuring that parties are provided with information regarding the mediation process and by ensuring that relevant documents are available to the parties;

(d) Conduct mediations fairly, diligently, even-handedly, and with no personal stake in the outcome;

(e) Avoid actual, potential, or perceived conflicts of interest that can arise from a mediator's relationships or experiences that reasonably raise a question about the mediator's impartiality;

(f) Affirmatively disclose to the mediation service provider and the parties any actual, potential or perceived conflicts of interest that could raise a question about the mediator's impartiality;

(g) Where a party, the mediator or the mediation service provider questions the mediator's ability to act impartially, and the issue cannot be resolved to the satisfaction of the questioner, the mediator shall decline to serve or withdraw if already serving as the mediator in a particular mediation. Having questioned a mediator's impartiality, and that mediator having declined to serve, the ability of a party to exclude any subsequent mediator shall be at the discretion of the mediation service provider;

(h) Not engage in any other services, other than mediation, for any of the parties involving the same or significantly related issues, unless the parties agree in writing; and

(i) Preserve the grantor's and the beneficiary's desired levels of confidentiality consistent with OAR 137-110-0640.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0610

Documents Required of the Grantor

(1) The grantor shall provide the following documents to the mediation service provider for provision to the beneficiary at least 15 days prior to the first scheduled mediation session:

(a) A completed "Universal Intake Form" provided in Appendix D and available by selecting "Form 610" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml;

(b) Pay stubs that confirm the grantor's income for the two full months immediately preceding the month during which the grantor submits the pay stubs;

(c) A profit and loss statement, if available, if the grantor is self-employed;

(d) Bank statements for the two full months immediately preceding the month during which the grantor submits the bank statements;

(e) A benefits statement or letter from the benefit provider showing the amount, frequency and duration of the benefit, if relying on social security, disability, unemployment or other non-wage benefit income;

(f) A divorce decree or judgment or separation agreement, if the grantor is relying on child support, alimony or maintenance payments;

(g) The grantor's most recent electric, heat, gas, or other utility bill;

(h) Most recent property tax statement or appraisal; and

(i) The grantor's tax returns from the two most recent years.

(2) If a grantor fails to timely provide documents as required by section (1) of this rule the grantor and the beneficiary shall nevertheless appear at the first scheduled mediation session. A grantor who does not timely provide a document required by this rule is at increased risk of the mediation concluding without the beneficiary being able to agree to a foreclosure avoidance measure.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5) & 3
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5) & 3
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0620

Documents Required of the Beneficiary

(1) The beneficiary shall provide the following documents to the mediation service provider for provision to the grantor at least 15 days prior to the first scheduled mediation session:

(a) The grantor's complete payment history for the obligation that is secured by the residential trust deed that the beneficiary seeks to foreclose;

(b) Evidence that the beneficiary is the real party in interest with respect to the obligation, including:

(A) A true copy of the original debt instrument that is the basis for the right the beneficiary seeks to foreclose; and

(B) Documents showing chain of title for the property at issue, including recorded and unrecorded conveyances, endorsements and assignments of the trust deed, the note and the security instrument;

(c) A copy of the authorization from the beneficiary to the beneficiary's agent, if the beneficiary's agent appears at mediation;

(d) A copy of any of the following documents that apply to the note or obligation that is secured by the trust deed:

(A) A servicing agreement the beneficiary entered into with another person; or

(B) An agreement by means of which the beneficiary pledged as collateral for a security the beneficiary issued or sold all or a part of the ownership interest in the note or other obligation;

(2) To the extent that the grantor has timely provided their documents as required by OAR 137-110-0610, the beneficiary or the beneficiary's agent shall provide the following documents to the mediation service provider or mediator for presentation to the grantor at or before the first scheduled mediation session:

(a) The beneficiary's or the beneficiary's agent's most recent broker price opinion or appraisal;

(b) A document that identifies each net present value model used by the beneficiary or the beneficiary's agent to assess the grantor for a foreclosure avoidance measure and the input values used by the beneficiary or the beneficiary's agent, and the output values produced by the net present value model;

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(c) A document that lists the total amount that a grantor must submit to the trustee to discontinue foreclosure proceedings, along with an itemized description of all costs and expenses incurred by the beneficiary or beneficiary's agent in connection with the foreclosure, including trustee and attorney fees; and

(d) Any other document the beneficiary believes limits the scope of the agent's authority to agree to a particular foreclosure avoidance measure.

(3) Nothing in section (2) of this rule requires a beneficiary or the beneficiary's agent to disclose the algorithmic formula of the net present value model used by the beneficiary or the beneficiary's agent.

(4) If a beneficiary fails to timely provide documents as required by section (1) of this rule, the grantor and the beneficiary shall nevertheless appear at the first scheduled mediation session. A beneficiary who fails to provide a document required by this rule is at risk of the mediation concluding without the beneficiary receiving a certificate of compliance.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(4)(a)(A) & 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(4)(a)(A) & 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0630

Rescheduling or Adjourning the Mediation Session

(1) All parties shall attend the scheduled mediation session unless the mediation is rescheduled in accordance with the provisions of this rule.

(2) Within 10 days of the mediation scheduling notice, either party may request that the mediation service provider reschedule the date for the mediation session to a date or location that is more convenient. The rescheduled mediation session must be no earlier than 45 days and not later than 90 days after the date on which the notice of mediation was served or mailed as provided in ORS 86.740.

(3) Except as provided in section (2) of this rule, no request from a party for rescheduling of the mediation session may be granted except upon a showing of good cause or upon a written agreement of the parties and the mediator. Notice of such written agreement shall be provided by facsimile, electronic mail, regular mail or by use of a web-based computer program provided by the mediation service provider.

(4) A request to reschedule the mediation session for good cause shall be in writing and delivered to the mediation service provider and the other party. The request shall set forth the circumstances demonstrating good cause with particularity.

(5) If the mediation service provider grants rescheduling, the mediation service provider shall issue a notice that provides the new date, time, and location of mediation within 10 days of the request for rescheduling.

(6) With the consent of the parties, a mediation session may be adjourned and a second mediation session scheduled.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0640

Confidentiality

(1) Except as otherwise provided in this rule or by the terms of any agreement to mediate executed by the parties prior to a mediation session, the foreclosure avoidance mediation process is confidential and mediation communications are inadmissible as provided in ORS 36.110 to ORS 36.238.

(2) The mediation service provider is a mediation program for the purposes of ORS 36.100 to 36.238.

(3) No videotaping, transcription or other recording of mediation sessions is permitted except by written agreement of the parties and the mediator.

(4) Before participating in a mediation session, the grantor and beneficiary may execute an "agreement to mediate" specifying the confidentiality provisions of the mediation, consistent with these rules and ORS 36.110 to 36.238.

(5) Mediations in which a state agency is a party are subject to ORS 36.224.

(6) An agreement to mediate executed by the parties prior to mediation is not confidential.

(7) Nothing in this rule prevents a mediator from disclosing the outcome of the mediation to the mediation service provider or from completing a report of the mediation outcomes on forms approved by the Attorney General. Such disclosures and reports are not confidential and may be disclosed or admitted as evidence in a subsequent proceeding.

(8) Nothing in this rule limits the ability of the mediation service provider or the Attorney General to compile and disclose general statistical information concerning matters that have gone to mediation if the information does not identify specific cases.

(9) Nothing in this rule limits the ability of the mediation service provider or the Attorney General to disclose confidential mediation communications, the disposition of matters referred for mediation and the terms of mediation agreements to another person for use in research, training or educational purposes, subject to the following:

(a) A mediator or mediation program may only use or disclose confidential mediation communications if the communications are used or disclosed in a manner that does not identify individual mediations or parties.

(b) A mediator or mediation program may use or disclose confidential mediation communications that identify individual mediations or parties only if and to the extent allowed by a written agreement with, or written waiver of confidentiality by, the parties.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0650

Participation in the Mediation Session

(1) Any party wishing to participate in mediation, including otherwise exempt beneficiaries or junior lienholders, shall do so in accordance with all other provisions of OAR 137-110-0001 to 137-110-0670.

(2) If a trust deed includes joint or multiple grantors, and fewer than all grantors confirm participation in the mediation session, the mediation may nevertheless occur with the consent of the beneficiary.

(3) The mediation service provider may assist the parties in obtaining an interpreter. However, if the mediation service provider is unable to provide an interpreter, the party needing an interpreter is responsible for securing and paying for the interpreter. The manner of participation of a language interpreter during a mediation session will be determined by the mediator.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0660

Agreements

(1) In the event the foreclosure issues are resolved before the scheduled mediation session, the parties shall advise the mediation service provider of their settlement using paper or web-based forms provided by the mediation service provider.

(2) Any agreement reached as a result of mediation shall be reduced to writing.

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(5)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(5)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-110-0670

Certificate of Compliance

(1) The mediation service provider shall issue a certificate of compliance upon notification by the mediator that the mediation has concluded and the beneficiary has complied with the requirements of these rules. The certificate of compliance shall be issued to the beneficiary or the beneficiary's agent no later than five days following the conclusion of the mediation.

(2) The mediation service provider shall issue a certificate of compliance if a grantor fails to confirm by the date provided by Oregon Laws 2012, chapter 112, section 2 (3)(c) that the grantor intends to enter into mediation.

(3) The certificate of compliance shall include:

- (a) The name of the grantor;
- (b) The name of the beneficiary;
- (c) The address of the property at issue;
- (d) Reference to the recording information of the trust deed at issue;
- (e) A certification that either:

(A) The beneficiary or its agent appeared at mediation and complied with the requirements of Or Laws 2012, ch 112, Sections 4 and 5;

(B) The grantor elected to enter into mediation but failed to appear at the time and place scheduled for mediation; or

(C) The grantor declined to enter into mediation with the beneficiary, or did not confirm intent to participate by the required date.

(4) The certificate of compliance described in this rule shall substantially comply with the model form provided in Appendix E to these division 110 rules and available as "Form 670" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(5) The certificate of compliance described in this rule shall be submitted via hard copy to the grantor(s) and beneficiary(ies) by facsimile machine, by U.S. mail, or in person. In addition, the mediation service provider may make the certificate of compliance available to the grantor and the beneficiary via a web-based computer program.

ADMINISTRATIVE RULES

Stat. Auth.: 2012 OL Ch. 112, Sec. 2(6)
Stats. Implemented: 2012 OL Ch. 112, Sec. 2(6)
Hist.: DOJ 10-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

Rule Caption: Adopts Rules Required by 2012 Legislation to Implement Foreclosure Avoidance Measure Notices.

Adm. Order No.: DOJ 11-2012(Temp)

Filed with Sec. of State: 7-6-2012

Certified to be Effective: 7-11-12 thru 1-6-13

Notice Publication Date:

Rules Adopted: 137-120-0010, 137-120-0020

Subject: These rules implement Or Laws 2012, ch 112 § 4a (SB 1552). They specify the form and content of the notice issued by a beneficiary when the beneficiary determines that a grantor is not eligible for any foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed. They also provide the address to which a copy of the notice must be sent to the Attorney General.

Rules Coordinator: Carol Riches—(503) 947-4700

137-120-0010

Application

These division 120 rules apply to any beneficiary seeking to foreclose a residential trust deed pursuant to ORS 86.705 to 86.795.

Stat. Auth.: 2012 OL Ch. 112, Sec. 4a
Stats. Implemented: 2012 OL Ch. 112, Sec. 4a
Hist.: DOJ 11-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

137-120-0020

Determination of Grantor Ineligibility for or Noncompliance With Foreclosure Avoidance Measure

(1) If a beneficiary determines that a grantor is not eligible for any foreclosure avoidance measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed, the beneficiary or the beneficiary's agent shall serve a notice of that determination to the grantor as provided in ORS 86.740(1) that includes:

- (a) The name of the grantor;
- (b) The name of the beneficiary;
- (c) The address of the property at issue;
- (d) A statement that the beneficiary has either:

(A) Determined that the grantor is not eligible for any of the following: a forbearance agreement, a temporary or permanent loan modification, a short sale, a deed-in-lieu of foreclosure, or any other foreclosure avoidance measure. The basis for the beneficiary's determination must be described with specificity in plain language; or

(B) Determined that the grantor is not in compliance with the terms of an agreement for forbearance, a temporary or permanent loan modification, a short sale, a deed-in-lieu of foreclosure, or another foreclosure avoidance measure. The basis for the beneficiary's determination must be described with specificity in plain language;

(e) Stating each foreclosure avoidance measure considered;

(f) Stating whether the beneficiary has been able to make contact with the grantor or receive adequate response from the grantor. If the grantor is ineligible for a foreclosure avoidance measure because the beneficiary has been unable to make contact with the grantor or receive adequate response from the grantor, stating what efforts were made to contact the grantor and the inadequacy of the response;

(g) Stating the date specified for the property's trustee sale; and

(h) Provide contact information for low-cost legal service providers and the Oregon State Bar.

(2) The notice described in section (1) of this rule shall substantially comply with the model form provided in the Appendix to these division 120 rules and available as "Form 20" at http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml.

(3) A copy of the notice described in section (1) of this rule shall be submitted to the Attorney General of Oregon at 1162 Court St. NE, Salem OR, 97301 or foreclosureavoidance@doj.state.or.us.

Stat. Auth.: 2012 OL Ch. 112, Sec. 4a(4)
Stats. Implemented: 2012 OL Ch. 112, Sec. 4a(4)
Hist.: DOJ 11-2012(Temp), f. 7-6-12, cert. ef. 7-11-12 thru 1-6-13

Department of Oregon State Police Chapter 257

Rule Caption: Agency modifies OAR 257-080-0000 et. Seq. to be in compliance with the repeal or ORS 181.290 et. Seq. July 2011.

Adm. Order No.: OSP 3-2012(Temp)

Filed with Sec. of State: 7-12-2012

Certified to be Effective: 7-12-12 thru 11-1-12

Notice Publication Date:

Rules Adopted: 257-080-0050, 257-080-0055

Rules Amended: 257-080-0000, 257-080-0005, 257-080-0010, 257-080-0015, 257-080-0020, 257-080-0025, 257-080-0030, 257-080-0035, 257-080-0040, 257-080-0045

Rules Suspended: 257-080-0000(T), 257-080-0005(T), 257-080-0010(T), 257-080-0015(T), 257-080-0020(T), 257-080-0025(T), 257-080-0030(T), 257-080-0035(T), 257-080-0040(T), 257-080-0045(T)

Subject: Legislative changes in July 2011 require that we clarify rules outlining the process afforded sworn, unrepresented members of the department during consideration of their removal from state service.

Rules Coordinator: Shannon Peterson—(503) 934-0183

257-080-0000

Purpose of Rules

These rules outline the process afforded sworn, unrepresented members of the Department during consideration of their removal from State service, with the following objectives:

(1) To permit the member to address the review board prior to a final decision on removal.

(2) To establish procedures for the member and the review board to follow.

(3) To recognize that sworn, unrepresented members of the department hold their respective positions in an "at-will" status.

(4) To provide the procedure for the decision of the Board to be communicated to the member and to the individual who made the initial recommendation on removal.

(5) To establish the internal mechanism for the member to make a request that the Review Board decision be considered and examined by the Office of the Superintendent.

Stat. Auth.: ORS 181.280 & 181.310
Stats. Implemented: ORS 181.290 - 181.340
Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0005

Statutory Authority for Rules

These rules are adopted under the authority provided by ORS 181.

Stat. Auth.: ORS 181.280 & 181.310
Stats. Implemented: ORS 181.290 - 181.340
Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0010

Definitions

(1) Department — refers to the Oregon Department of State Police.

(2) Member — refers to the sworn, unrepresented member with sustained allegations who is afforded an informal meeting under these rules.

(3) Review Board members — Department members appointed by the Superintendent or designee.

(4) Recommending staff — the Department staff making the initial recommendation for removal of the member.

(5) Personnel Report — the record of information that was gathered during a personnel investigation and fact-finding process which is used to decide whether there are grounds to consider the removal of the member from the Department.

Stat. Auth.: ORS 181.280 & 181.310
Stats. Implemented: ORS 181.290 - 181.340
Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0015

Grounds for Removal

Because members subject to these rules hold their position as "at-will" employees, the member's employment is not subject to any cause standard and the Department legally retains discretion in making a decision on removal.

Stat. Auth.: ORS 181.280 & 181.310
Stats. Implemented: ORS 181.290 - 181.340
Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

ADMINISTRATIVE RULES

257-080-0020

Investigation and Fact Finding Processes

(1) The investigation process will be the fact-gathering process the Department follows in conducting personnel investigations as found in the most current form of the Department Manual titled "Personnel Complaint Procedures and Guidelines for investigations and Corrective Action."

(2) The fact-finding process will follow those provisions in the most current form of the same Department Manual under the "Making Findings of Fact" section.

(3) If the results of this process result in "sustained" Findings of Fact the process under these rules will continue.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Administrative Reformatting 12-1-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0025

Procedure to notify member of Findings, Recommendation, and Request to convene a Review Board

(1) The sustained Findings of Fact and Recommendation will be prepared and signed by the recommending staff, or the Office of Professional Standards, and shall include:

(a) The name and duty station of the member.

(b) A listing of sustained allegation(s) with a finding for each.

(c) A statement that removal of the member is being recommended along with a request to convene a Review Board.

(2) The document may include:

(a) A description of information concerning the member's tenure with the department such as performance reviews and any letters in the file which may be relevant to an understanding of the allegations;

(b) Particular training or education provided;

(c) Prior corrective action(s);

(d) Informal discussions or other communications with the member by other managers or supervisors;

(e) The availability of written standards or expectations - whether formal or informal; and

(f) Any other matters which may provide a context in which to review the specific conduct at issue.

(3) A suggested format for the document is:

(a) Member's name;

(b) Member's duty station;

(c) As a sworn member of the department, subject to ORS 181.280 and OAR 257, division 80, this is written notice of allegation(s) from which a recommendation for your removal as a member of the department has been made along with a request to convene a Review Board.

(d) Relevant background information as appropriate.

(e) The facts that have been sustained, setting them out in a logical and chronological format, using headings and subheadings if necessary, to assist the reader in understanding the particulars that form the basis of the recommendation.

(4) The completed document with the sustained allegations, recommendation and request shall be delivered to the Office of Professional Standards, where they will be filed and logged.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0030

Initiating a Review Board

(1) Upon notice from the Office of Professional Standards that the completed document with the sustained allegations, recommendation and request has been filed and logged, the Superintendent or designee, shall appoint a three person Board of Review.

(2) The Board shall consist of three members who are of superior rank to the involved member, if that is possible, and the three members shall be of equal rank, also to the extent that is possible.

(3) The Board shall convene, select a Presiding Officer, and determine the time and place of the meeting to be scheduled with no less than ten days notice to the member.

(4) The member shall be notified, in writing, of the following:

(a) The individuals composing the Review Board and the member's right to demand, in writing and one time only, that any or all of the persons appointed to the board be replaced without stating reason or cause. On receipt of such a demand, the Superintendent or designee shall appoint new representatives to replace those removed;

(b) The location, date and time of the member to meet with the Board;

(c) The member's right to be accompanied by legal counsel, at their own expense, or another employee of their choosing to assist them in presenting information or suggesting further inquiry before a decision is made by the Board;

(5) If an extension of time is necessary for the member to prepare a presentation, the board shall grant a reasonable period of time upon request.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0035

Review Board — Generally

(1) An audio recording of the meeting will be made, which shall constitute the only record.

(2) The Board may have legal counsel from the Oregon Department of Justice to advise them on any matters and attend the meeting and deliberative process as it deems necessary.

(3) Failure to comply with one or more of the terms of these rules concerning the Review Board process shall not invalidate any sustained allegations or negate any proceeding before the board.

(4) All attendees shall conduct themselves in a respectful manner. Failure to comply with the Board's effort to retain order will result in expulsion from the meeting.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0040

Review Board Pre-meeting Matters

(1) The Department shall forward to the member, within a reasonable time after the hearing is set, all investigative reports and other documents prepared according to the requirements of the department's personnel review manual.

(2) The member's official personnel file shall be available for inspection by the parties or their respective representatives upon advance request to the Office of Professional Standards Section at General Headquarters.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0045

Board Meeting

(1) The Board designated Presiding Officer shall open the meeting on the record, by introducing the parties and identifying the purpose of the meeting.

(2) The record made available to the Board shall be identified by the Presiding officer.

(3) The member, or designee, may make opening remarks.

(4) The member may offer physical evidence and written statements.

(5) Review Board members may ask questions of the member.

(6) The member or designee may make concluding remarks.

(7) The meeting will be private unless the member makes written request that it be public.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0050

The Board's Decision

(1) The Board shall adjourn the meeting and meet in private to reach a decision regarding corrective action, which decision shall then be reduced to written form.

(2) The Board decision shall state specifically whether removal or other corrective action is appropriate with a brief explanation of its rationale.

(3) In assessing an appropriate action the board may consider:

(a) The rank and corresponding duties and expectations for the position held by the member;

(b) The number and relative severity of sustained allegations; and

(c) Any information presented by the member at the meeting regarding the sustained allegations.

(4) The Board is not authorized to apply the concept of "progressive discipline" as a matter of right.

(5) The Board is not authorized to nor shall it require proof of "cause" as it makes a decision.

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(6) The decision of the Board shall be delivered to the member and the Office of Professional Standards by hand-delivery or certified mail, return receipt requested, as is most expeditious.

Stat. Auth.: ORS 181.280 & 181.310
Stats. Implemented: ORS 181.290 - 181.340
Hist.: OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

257-080-0055

Office of Superintendent's consideration of Review Board Decision

(1) Following receipt of the Board's decision the member may request the Office of the Superintendent to consider the Board's decision by an examination of all materials, including the tape of the Review Board meeting.

(2) The request must be in writing and received by the Office of Professional Standards not later than fifteen (15) days after the date of the Board's decision.

(3) The request may include a meeting by the member with the Superintendent or a designee in addition to the examination of the associated documentation.

(4) If no request is made, the Superintendent will send a notice to the member with a Final decision.

(6) The Superintendent retains the ultimate legal authority on whether to remove the member.

(7) The Superintendent shall inform the member in writing of the final decision, with a brief explanation that the Superintendent has exercised the legal discretion afforded the Department in arriving at a decision.

(8) There is no right of appeal of the decision on removal.

Stat. Auth.: ORS 181.280 & 181.310
Stats. Implemented: ORS 181.290 - 181.340
Hist.: OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12

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

Rule Caption: Clarifies fire investigator qualification requirements for exempt jurisdictions.

Adm. Order No.: OSFM 8-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 6-27-12

Notice Publication Date: 6-1-2012

Rules Amended: 837-039-0040

Subject: Requires fire investigators that are doing fire investigations beyond that of company level investigations to be Department of Public Safety Standards and training (DPSST) certified or possess a national recognized Certified Fire Investigator (CFI) certification issued by the International Association of Arson Investigators (IAAI) or a Certified Fire and Explosion Investigator (CFEI) certification issued by the National Association of Fire Investigators or possess a state or federal certification that meets the requirements of the National Fire Protection Association 1033, Professional Qualifications for Fire Investigator.

Rules Coordinator: Connie Dalke—(503) 934-8211

837-039-0040

Exemption Criteria

(1) In order to qualify for partially exempt status, applicants must provide evidence that they effectively administer and enforce the fire code sections specified in their application.

(2) To the extent of the proposed exemption, an ability to effectively administer a fire code is demonstrated by meeting or exceeding the qualifications described in this section.

(3) The applicants must employ a number of fire prevention personnel they deem adequate to:

(a) Inspect regulated buildings on a frequency they deem necessary to provide a reasonable level of fire and life safety in the applicant's service area.

(b) Annually inspect;

(A) Hospitals (I-2) and for licensing or certification by the Health Division except for I-2 Nursing Homes; and

(B) Licensed Day Cares (I-4) and for licensing by the Employment Department; and

(C) Mental Hospitals (I-2), Jails (I-3), Prisons (I-3) and Reformatories (I-3) in the applicant's service area.

(c) Inspect licensed Boarding/Residential Schools (E), Group Homes and Residential Board/Care Facilities (SR) bi-annually or at the request of the Licensing Agency for a license renewal; and

(d) Initially inspect Ambulatory Health Care Facilities (I-2) and Clinic-outpatient (B) and then every three years. A self inspection program may be initiated in the two intervening years. The process for the self inspection must be explained in the Exempt Jurisdiction's business plan; and

(e) Inspect licensed Sheltered Workshops (various occupancies) every three years.

(f) Make necessary reinspections at appropriate intervals to assure compliance with correction orders issued in response to noted deficiencies in the applicant's service area; and

(g) Make necessary special inspections as warranted for unusual conditions, including but not limited to, response to complaints of special hazards and special events requiring supervision in the applicant's service area.

(h) Provide consultation upon request of the licensing agency for Adult Foster Care Homes, pursuant to ORS 476.030(6) in the applicant's service area.

(4) Fire code administration personnel must meet the competency requirements for their elected scope of practice as outlined in section 837-039-0120.

(5) Applicants must provide evidence that they assure coordination among all authorities responsible for structural fire safety and fire protection within the applicant's service area.

(6) Applicants must:

(a) Provide the services specified in this rule to all service areas.

(b) Have the ability to provide an administrative appeals process upon the request of any party who may receive a fire code compliance order issued by the applicant. Such delegated appeal process must generally conform to a contested case proceedings described under ORS Chapter 183 unless otherwise provided for by state law; or

(c) Establish or maintain a fire code appeals board generally performing the functions outlined in ORS 476.115. If such Appeals Board meets the criteria established in subsection (6)(c) of this rule, the Board may hear local and delegated appeals and rule on fire code or other issues such as alleged unnecessary hardship, inconsistent regulations, requests for alternate materials or methods, etc.

(7) When a fire code delegated appeals process or board has been established under section (6) of this rule, applicants must:

(a) Coordinate the interpretation of state fire laws with the State Fire Marshal to assure uniformity;

(b) Submit a list of hearing officers or board members, including their term of appointment, to the State Fire Marshal. An updated list must be submitted annually or upon any change; and

(c) Submit a written summary of the results of any fire code appeal to the State Fire Marshal within 30 days of issuance of a final order.

(8) To the extent of the proposed exemption, applicants must employ an adequate number of fire investigation personnel to investigate the origin, cause, and circumstances of those fires, where the investigation is not completed at the company level, within the applicant's jurisdiction. Applicants must substantiate that their investigators are reasonably qualified through:

(a) Being DPSST certified as a NFPA Fire Investigator; or

(b) Possess the nationally recognized certification of Certified Fire Investigator (CFI) issued by the International Association of Arson Investigators (IAAI) or Certified Fire and Explosion Investigator (CFEI) issued by the National Association of Fire Investigators (NAFI); or

(c) Possess a state or federal certification that fully meets the requirements set forth in the National Fire Protection Association 1033 Professional Qualifications for Fire Investigator.

(9) To the extent of the proposed exemption, applicants must employ an adequate number of trained personnel, as determined by the applicant to provide effective fire prevention education for all schools, institutions, and similar occupancies in the applicant's service area.

(10) To the extent of the proposed exemption, applicants must maintain records of their fire code administration and delegated appeal activities or other related functions as follows:

(a) Fire prevention inspection records must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(b) Records of fire code appeals must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(c) Fire investigation records which document a loss of life must be maintained for a period of 75 years. Other investigation records must be

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maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(d) Records of public fire education efforts must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(e) Records not otherwise described in this section must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(11) In the event an exempt jurisdiction ceases for any reason to be exempt, all records described in this section must be maintained by the jurisdiction as per the Records Retention Schedule of the Secretary of State Archives Division.

(12) Applicants must forward to the State Fire Marshal a written annual report which:

(a) Clearly describes the fire prevention and investigation activities of the applicant;

(b) Is on a calendar year basis; and

(c) Is forwarded to the State Fire Marshal no later than July 1st of the following year.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08; OSFM 8-2012, f. & cert. ef. 6-27-12

Department of Oregon State Police, State Athletic Commission Chapter 230

Rule Caption: Amends rule to authorize the OSP Superintendent to waive medical requirements for referee applicants.

Adm. Order No.: SAC 1-2012(Temp)

Filed with Sec. of State: 7-12-2012

Certified to be Effective: 7-12-12 thru 8-12-12

Notice Publication Date:

Rules Amended: 230-020-0300

Subject: Oregon Revised Statute (ORS) 463.113(1) authorizes the Oregon Athletic Commission (Commission) to adopt administrative rules for “* * * conducting professional boxing and mixed martial arts events that promote the safety and best interest of the contestants and of the public.” Similarly, ORS 463.113(2) authorizes the Oregon Department of State Police (OSP) Superintendent to “* * * adopt and enforce rules for conducting professional boxing and mixed martial arts events that promote the safety and best interest of the contestants and of the public.” In addition, ORS 463.165(2) provides, in pertinent part, that the Commission “* * * shall recommend, and the superintendent shall adopt without change, reasonable qualifications for licensure as a promoter, manager, matchmaker, professional boxer, professional or amateur mixed martial arts competitor, judge, referee, second or timekeeper.” The Commission and OSP Superintendent have previously adopted administrative rules for professional boxing and mixed martial arts events, including Oregon Administrative Rule (OAR) 230-020-0300 which sets out medical requirements for licensure of boxers, mixed martial arts competitors, and referee applicants. Under that rule, prior to refereeing any professional boxing or mixed martial arts event, referee applicants must undergo a physical examination by a physician approved by the Commission, and the physical examination must be accompanied by a witnessed collection of lab specimens from the referee applicant.

OAR 230-020-0300 is an administrative rule that the Commission recommended to the Superintendent when the rule was adopted in 2008. Pursuant to ORS 463.165(2), the Commission has recently recommended that the administrative rule be amended to authorize the OSP Superintendent to waive any medical requirement(s) for referee applicants based on the OSP Superintendent’s finding that an emergency exists. Amendment of OAR 230-030-0300 is necessary to formally adopt the Commission’s recommendation into the rule and carryout the requirement of ORS 163.165(2) that the OSP Superintendent adopt “without change,” the Commission’s recommended reasonable qualifications for inter alia referee applicants. The amendment contained in temporary OAR 230-030-0300 incorporates the Commission’s recent recommendations and specifically authorizes the OSP Superintendent to waive any medical requirement(s) for referee

applicants based on the OSP Superintendent’s finding that an emergency exists.

Rules Coordinator: Shannon Peterson—(503) 934-0183

230-020-0300

Medical Requirements for Licensure

Medical Examination of Boxer, Mixed Martial Arts Competitor and Referee Applicants.

(1) Any applicant for a license as a boxer or professional mixed martial arts contestant or as a referee, who resides in this state at the time of application shall be examined by a physician approved by the commission pursuant to 230-020-0215.

(2) Physicals must be accompanied by the witnessed collection of lab specimens accomplished at the time of the examination. Results of the examination, with reports of the laboratory analysis of the specimens attached to the examination form, must be submitted directly to the Commission on a form provided by the Commission.

(3) An applicant for a license as a boxer, professional mixed martial arts competitor, or referee who does not reside in Oregon at the time of application may submit proof of medical qualification if the examination is performed by a physician authorized to perform such examinations by the state or nation in which the examination is conducted and if it is conducted in accordance with Commission’s instructions including the use of applicable forms provided by the Commission.

(4) Annual renewal examination. Any boxer’s, professional mixed martial arts competitor’s, or referee’s renewal application must be accompanied by a report of an updated medical exam. The examining physician may require laboratory testing at the applicant’s expense, if in the judgment of the physician the applicant’s win/loss record, number of TKOs, age, or other history warrants the testing. The results of the medical examination, including the results of laboratory tests, should be submitted at least 14 days prior to renewal date. Any delay in submitting the report of the results of the medical examination or the laboratory tests may delay a decision on the renewal of the license.

(5) Boxer, mixed martial arts competitor, or referee applicants for initial or renewal licensing must also submit evidence that the applicant has, within the previous 30 days, been administered an HIV test for the presence of AIDS antibodies and that the results of such test were negative.

(6) Boxer, mixed martial arts competitor, or referee applicants for initial or renewal licensing must also submit evidence that the applicant has, within the previous 30 days, been tested for Hepatitis B and Hepatitis C and that the results of such tests were negative.

(7) An applicant for renewal of a license as a boxer or mixed martial arts competitor and the applicant’s manager are jointly responsible for submitting the report of the results of the medical examination and laboratory testing, including HIV test.

(8) An application for a license or for renewal of a license as a boxer, mixed martial arts contestant, or referee will be denied if the applicant’s medical examination indicates the presence of prohibited substances, as described in OAR 230-020-0450. The Superintendent will not consider a reapplication for a period of 30 days from the date of denial. If, after reapplication, a second test reveals the presence of prohibited substance, the Superintendent will not consider a reapplication for a period of 180 days from the date of the first license denial under this section.

(9) The Superintendent may waive any medical requirements for referee applicants if the Superintendent determines that an emergency exists.

Stat. Auth.: ORS 463.113

Stats. Implemented: ORS 463.025 & 463.113

Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Section

(4) renumbered from 230-060-0120(3) & section (5) renumbered from 230-060-0120(4);

BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08; SAC

1-2012, f. & cert. ef. 7-12-12 thru 8-12-12

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Clarify discretionary Public Safety Memorial Fund benefit parameters.

Adm. Order No.: DPSST 14-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 6-1-2012

Rules Amended: 259-070-0020

Subject: This rule amendment clarifies the parameters for discretionary Public Safety Memorial Fund benefits which may be awarded by the Public Safety Memorial Fund Board to eligible benefici-

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aries. First, clarification is made to allow for health and dental coverage reimbursement only if an eligible child, as defined in statute, was enrolled as an undergraduate student during the entire period of requested reimbursement. Secondly, clarification is made by indicating that an application requesting mortgage payments must be made within one year following the initial determination of benefit eligibility.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-070-0020

Discretionary Benefits

(1) The Board will consider financial need, available funds in the Public Safety Memorial Fund and the anticipated demands on the fund in determining payment amounts of discretionary benefits.

(2) Health and Dental Insurance Reimbursement. The Board may award health and dental reimbursement for coverage comparable to that provided by the public safety officer to eligible family members or designees if alternate coverage is not provided.

(a) Spouses or designees are eligible for five years after the date of the final order confirming eligibility or until re-marriage, whichever occurs first.

(b) An eligible child between the ages of 18 and 23 years is eligible for reimbursement only if enrolled as a full-time undergraduate student during the entire period of the requested reimbursement.

(3) Mortgage Payments. An application requesting mortgage payments must be made within the first 12 months following the initial determination of eligibility.

(4) Scholarship Considerations. In determining the amount of scholarship benefits under ORS 243.956(8) and (10), "State Institution of Higher Education" means an institution listed in ORS 352.002.

Stat. Auth.: ORS 243.950

Stats. Implemented: ORS 243.962 & 243.968

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05; DPSST 14-2012, f. 6-27-12, cert. ef. 7-1-12

Rule Caption: Update definitions; Clarify education requirements; Allow equivalent military training and experience to meet licensing requirements.

Adm. Order No.: DPSST 15-2012

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 6-28-12

Notice Publication Date: 6-1-2012

Rules Amended: 259-020-0005, 259-020-0010, 259-020-0015

Subject: All definitions have been reviewed to ensure consistency between ORS 703.010 and Oregon Administrative Rule. Definitions for internship, polygraph examiner and trainee have been added to rule. Statutory references were corrected.

House Bill 4063 passed during the 2012 legislative session and requires licensing agencies to accept an applicant's military training or experience as a substitute for required education or experience if the military training is substantially similar to the education and experience requirements for licensure, certification or registration.

A clarification is made to OAR 259-020-0015 which was recently updated to implement Senate Bill 71, enacted during the 2011 legislative session. The rule clearly identifies the education requirements; allowing individuals to meet the minimum education requirement for a general polygraph examiner's licensure if they have received a baccalaureate degree OR been awarded a GED certificate and have at least five years of investigative experience.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-020-0005

Definitions

(1) "Board" means the Board on Public Safety Standards and Training.

(2) "Completed Examination" means an examination in which charts are recorded.

(3) "Department" means the Department of Public Safety Standards and Training.

(4) "Director" means the director of the Department.

(5) "Internship" means the study by a trainee of polygraph examinations and of the administration of polygraph examinations under the per-

sonal supervision and control of a polygraph examiner in accordance with the course of study prescribed by the Board at the commencement of such study.

(6) "Person" means any individual, firm, association, partnership, or corporation.

(7) "Polygraph Examiner" means a person who purports to be able to detect deception or verify the truth of statements through the use of instrumentation or of a mechanical device that records visually, permanently and simultaneously the cardiovascular pattern, the respiratory pattern and the galvanic skin response of the individual being examined.

(8) "The Act" means the Polygraph Examiners Act (ORS 703.010 to 703.310).

(9) "Trainee" means a person licensed under the Act to engage in an internship.

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 3-1987, f. & ef. 10-26-87; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 9-2001, f. & cert. ef. 9-19-01; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 15-2012, f. & cert. ef. 6-28-12

259-020-0010

Minimum Standards for a Polygraph Examiner Trainee License

(1) Any applicant for a license as a polygraph examiner trainee must:

(a)(A) Have graduated from a polygraph examiner's course approved by the Department; or

(B) Provide documentation of military experience or training that the Department determines is substantially equivalent to the education required by subsection (a)(A) above.

(b) Be at least 18 years of age;

(c) Be a citizen of the United States;

(d) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030.

(e) Provide any information required by the Department relating to the circumstances of a conviction, if the applicant has previously been convicted of a criminal offense. ORS 670.280 is applicable when the Department considers information provided under this paragraph.

(f) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay the costs of the state and federal fingerprint background checks.

(B) Currently employed corrections officers, parole and probation officers, or police officers as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(g) Submit a completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as may be required by the Department.

(h) Submit appropriate fees to the Department as prescribed by OAR 259-020-0035.

(2) The internship requirements of any person who is licensed as a trainee under this rule include:

(a) Periodic consultation with licensed general polygraph examiners of the trainee's own choice;

(b) A total review of 20 examinations from the first 200 examinations conducted must be reviewed by a licensed general polygraph examiner. The following review format is mandatory:

(A) 1st series — 5 examinations reviewed of the first 20 conducted;

(B) 2nd series — 5 examinations reviewed of the next 30 conducted;

(C) 3rd series — 5 examinations reviewed of the next 50 conducted;

(D) 4th series — 5 examinations reviewed of the last 100 conducted.

(E) During each review series, the trainee must have a general polygraph examiner complete a Polygraph Review Critique (DPSST Form F-203a) on each set of examinations reviewed. The trainee must forward the original critiques to the Department. One copy of the form must be retained by the reviewer, and one copy must be retained by the trainee. These reviews must be completed and forwarded to the Department within 30 days of the completion date of each of the four (4) series of examinations

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shown above. The Department will not renew a trainee license unless the trainee has complied with the examination requirements in this subsection.

(F) At least two (2) review series must be completed with a general polygraph examiner during personal interviews. However, if time and distance are a distinct problem, up to two of the review series may be completed by mail. These review procedures cannot be interpreted as detracting from the trainee examiner's ability or expertise, but will be considered as legitimate, professional consultation.

(c) When participating in this prescribed course of study, trainees may administer specific issue examinations. If the trainee conducts a test which is to be offered as evidence in a court of law, the trainee must seek and utilize the assistance of a general polygraph examiner during the administration of the case and must have that general polygraph examiner available for continued consultation, including joint court appearances, if necessary. Each trainee should obtain legal advice concerning all questions relating to admissibility of polygraph examination evidence.

(d) Every trainee must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) must provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the trainee examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless State Archivist rules require longer maintenance.

(e) A person may not hold a license as a trainee for more than two years. An extension of the two-year period may be granted for good cause.

(A) If the applicant requests an extension of time to hold the trainee license beyond the initial two year limitation, the Department may grant an extension to the date of the next regularly scheduled Polygraph Licensing Advisory Committee meeting. The applicant will be scheduled to appear at the next committee meeting. The applicant must provide his/her request/justification for the extension, polygraph log, and ten of the last polygraph reports and charts performed by the trainee. If just cause is presented, the Polygraph Licensing Advisory Committee may recommend an extension to the Department.

(B) The Polygraph Licensing Advisory Committee may recommend additional requirements that must be met during the extension period. Failure to complete any additional requirements imposed by the Department during an extension period may be grounds to deny any additional extension requests.

(f) Trainees must clearly indicate their trainee status on all letterhead, business cards, advertising, signage, and any other type of written material that describes a polygraph examination or review of a polygraph examination.

(3) A trainee must not conduct more than five (5) completed examinations, of any type, in any one calendar day. A completed examination is an examination as defined in OAR 259-020-0005(2).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 23-2008(Temp), f. & cert. ef. 12-29-08 thru 5-30-09; DPSST 1-2009, f. & cert. ef. 2-2-09; DPSST 15-2012, f. & cert. ef. 6-28-12

259-020-0015

Minimum Standards for a Polygraph Examiner

(1) Any applicant for a license as a general polygraph examiner must:

(a) Be at least 18 years of age;

(b) Be a citizen of the United States;

(c) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030;

(d) If previously convicted for a criminal offense, provide information relating to the circumstances of the conviction as required by the Department. ORS 670.280 is applicable when the Department considers information provided under this paragraph;

(e) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No general license will be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section.

(B) Currently employed corrections officers, parole and probation officers, or police officers, as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(f)(A) Have received a baccalaureate degree from an accredited college or university; or

(B) Have graduated from high school or have been awarded a General Educational Development (GED) certificate; and have at least five years of active investigative experience before the date of the application.

(i) Active investigative experience is acquired through full-time employment as an investigator. An investigator is a person whose primary assigned duty is the investigation of actual or suspected violations of law, either criminal or civil.

(ii) Administering polygraph examinations will satisfy the investigative experience requirement of this section.

(iii) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by this section.

(g) Have graduated from a polygraph examiner's course approved by the Department and have completed at least 200 examinations, or have worked as a polygraph examiner for a period of at least five years for a governmental agency within the State of Oregon and have satisfactorily completed at least 200 examinations.

(h) An applicant may meet the requirements of subsection (f) and (g) of this section if the applicant provides the Department with documentation of military training or experience that the Department determines is substantially equivalent to the education or experience requirements.

(i) Have successfully completed an examination conducted by the Department in consultation with the Advisory Committee as defined in OAR 259-020-0055, to determine competency to act as a polygraph examiner. The Department, in consultation with the Advisory Committee, will prescribe the manner and contents of any examination conducted by the Department under provisions of the Act.

(j) Submit a fully-completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as required by the Department.

(k) Submit to the Department appropriate fees as prescribed by OAR 259-020-0035.

(2) Any person who has held a trainee license for longer than 12 months and who has completed the 200 exams required under OAR 259-020-0015 must take the general license examination within 12 months of completing the required exams.

(3) The Department in consultation with the advisory committee may prescribe requirements for:

(a) The internship of an applicant who fails to pass the first or second oral or written part of the examination described in OAR 259-020-0015(1)(h);

(b) An applicant who resides in a state other than Oregon. The minimum requirements for an out-of-state examiner who does not qualify under ORS 703.130 must include:

(A) Substantial compliance with the applicable requirements for in-state examiners;

(B) A log meeting Oregon guidelines;

(C) Passing the Oregon licensing examination;

(D) Submitting at least 20 of the last 100 polygraph examinations conducted to a licensed Oregon general polygraph examiner for review. A Polygraph Review Critique (DPSST Form F-203a) must be completed on the examinations and provided to the Department for review by the Polygraph Licensing Advisory Committee; and

(E) Demonstrating proficiency in the field of polygraphy by an oral interview with the Polygraph Licensing Advisory Committee.

(c) Any individual whose license has expired for a period of more than two years and who reapplies for licensure. These requirements may include, but are not limited to:

(A) Documentation indicating any necessary training requirements have been met; and

(B) Verification that the individual has the current knowledge, skills and ability to perform the duties of a polygraph examiner.

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(4) The Department will immediately suspend an applicant's trainee license if the applicant fails the third examination. The applicant may submit a new application for a general license only after retaking and successfully completing a polygraph examiner's course approved by the Department and meeting any additional requirements.

(5) The Director, acting on the written recommendation of the Polygraph Examiners Licensing Advisory Committee, may require a licensed general polygraph examiner to appear for reexamination as directed.

(a) In preparing its written recommendation, the Committee must identify the good cause reasons for its recommendation.

(b) Based on the written recommendation, the reexamination may include the written examination, the oral examination, or both.

(c) Failure of the licensee to comply with the directive to appear for reexamination will result in the suspension of the license by the Department, until the licensee appears as directed.

(6) Every examiner must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) will provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless any applicable Oregon State Archives Records Retention Schedules require longer retention.

(7) An examiner must not conduct more than five (5) completed examinations, of any type, in any one calendar day.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 703.230

Stat. Implemented: ORS 703.210, 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 1-2009, f. & cert. ef. 2-2-09; DPSST 10-2010, f. 10-15-10, cert. ef. 11-1-10; DPSST 19-2011, f. & cert. ef. 12-30-11; DPSST 2-2012(Temp), f. & cert. ef. 2-24-12 thru 8-15-12; DPSST 15-2012, f. & cert. ef. 6-28-12

Rule Caption: Clarify the private investigator licensure exception identified in ORS 703.411(1).

Adm. Order No.: DPSST 16-2012

Filed with Sec. of State: 7-2-2012

Certified to be Effective: 7-2-12

Notice Publication Date: 6-1-2012

Rules Amended: 259-061-0018

Rules Repealed: 259-061-0018(T)

Subject: This rule clarifies the interpretation of the exception to the private investigator licensure requirement that is identified in ORS 703.411(1). "A person who is employed by one employer in connection with the affairs of that employer" is explained to be a person who has one, exclusive employer and who conducts business on behalf of that employer only. The exception does not apply to a person who conducts investigations on behalf of the employer's clients. This rule is retroactive to the date in which the Department of Public Safety Standards and Training began relying on Department of Justice advice (August 9, 2011.)

Rules Coordinator: Linsay Hale—(503) 378-2431

259-061-0018

Prohibited Acts

(1) A person may not act as an investigator or represent that the person is an investigator unless that person is licensed under ORS 703.430 and these rules.

(2) Exemptions: Persons described in ORS 703.411 are exempt from regulation as private investigators.

(3) For the purposes of ORS 703.411(1), a person is "employed exclusively by one employer in connection with the affairs of that employer only" when;

(a) The person has one, exclusive employer; and

(b) The person conducts investigations on behalf of that employer only. This subsection does not apply to a person who conducts investigations on behalf of the employer's clients.

(c) This rule applies as of August 9, 2011.

Stat. Auth.: ORS 703.430, 703.480

Stats. Implemented: ORS 703.430, 703.480

Hist.: DPSST 1-2012(Temp), f. & cert. ef. 2-6-12 thru 7-31-12; DPSST 16-2012, f. & cert. ef. 7-2-12

Department of Transportation Chapter 731

Rule Caption: Oregon Transportation Infrastructure Fund loans or assistance.

Adm. Order No.: DOT 3-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 6-27-12

Notice Publication Date: 5-1-2012

Rules Adopted: 731-030-0170

Rules Amended: 731-030-0010, 731-030-0030, 731-030-0040, 731-030-0050, 731-030-0090, 731-030-0100, 731-030-0110, 731-030-0120, 731-030-0130, 731-030-0150, 731-030-0160

Rules Repealed: 731-030-0080

Subject: The Oregon Transportation Infrastructure Fund has been operating for over 15 years, and its administrative rules were in need of updating. There was also a need to state under what terms the Oregon Transportation Infrastructure Fund will lend or give assistance to other state agencies and to divisions or other organizational units within the Department of Transportation.

Rules Coordinator: Lauri Kunze—(503) 986-3171

731-030-0010

Purpose of the Rules

OAR 731-030-0010 to 731-030-0170 establish the procedures and requirements for the administration of the Oregon Transportation Infrastructure Fund and for the creation and operation of the Oregon Transportation Infrastructure Bank.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0030

Definitions

For the purposes of OAR 731-030-0010 through 731-030-0170, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Applicant" means a Municipality or any other entity authorized by law to obtain an Infrastructure Loan or Infrastructure Assistance including an Agency or the Department.

(2) "Application" means the form, prescribed by the Department, and all supplemental attachments, exhibits and other supporting papers that the Applicant completes and provides to the Department to request an Infrastructure Loan or Infrastructure Assistance through the Oregon Transportation Infrastructure Bank.

(3) "Agency" has the meaning given in ORS 367.010(1).

(4) "Agency Contract" means an inter-agency agreement between the Department and an Agency or intra-agency agreement between the Department and a Department Borrower, that is intended to be binding on the State of Oregon and the Agency or the Department Borrower, respectively, as provided in ORS 367.040.

(5) "Agreement" means a legally binding contract between the Department and a Recipient that sets out the terms and conditions under which the Department is providing an Infrastructure Loan or Infrastructure Assistance.

(6) "Bond" has the meaning given in ORS 367.010(2).

(7) "Bond Counsel" means a law firm having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

(8) "Bond Debt Service" has the meaning given in ORS 367.010(3).

(9) "Chief Financial Officer" means the fiscal officer designated under ORS 184.637, who is also the manager of ODOT Financial Services.

(10) "Collateral" means any real or personal property, including but not limited to intangibles, bonds, revenues or other money, that is or may be pledged, or subject to a lien or security interest to secure the repayment of an Infrastructure Loan, and includes any property included in the definition of collateral in ORS 79.0102(1).

(11) "Commission" means the Oregon Transportation Commission.

(12) "Credit Enhancement" has the meaning given in ORS 367.010(4).

(13) "Debt Service Reserve" means any moneys reserved for debt service for, or used to secure payment of, Infrastructure Bonds. A Debt

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Service Reserve may be held in a segregated account in the Infrastructure Fund or by a trustee.

(14) "Department" or "ODOT" means the Oregon Department of Transportation.

(15) "Department Borrower" means a division or other organizational unit in the Department that applies for or receives an Infrastructure Loan or Infrastructure Assistance from the Oregon Transportation Infrastructure Fund.

(16) "Director" means the director of the Department.

(17) "Financial Advisor" means a consultant providing the Department with information and advice relative to the structure, timing, marketing, pricing, terms and bond ratings for the sale of Infrastructure Bonds.

(18) "Infrastructure" means any construction project, facility, property or program that provides the foundation or basic framework by which an entity provides transportation services to the public.

(19) "Infrastructure Assistance" has the meaning given in ORS 367.010(6).

(20) "Infrastructure Bonds" has the meaning given in ORS 367.010(7).

(21) "Infrastructure Fund" has the meaning given in ORS 367.010(8).

(22) "Infrastructure Loan" has the meaning given in ORS 367.010(9).

(23) "Municipality" has the meaning given in ORS 367.010(10).

(24) "Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the U.S. Department of Transportation and the Department dated August 26, 1996.

(25) "Oregon Transportation Infrastructure Fund" means the fund established in ORS 367.015.

(26) "Public Transit Division Administrator" means the administrative head of the Transit Division or his or her designee.

(27) "Private Entity" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or non-profit unincorporated association, a business trust, or any other entity with legal capacity to contract which is not a Government, as defined by ORS 165.075, or a Local Government as defined by ORS 174.116.

(28) "Recipient" means an Applicant that has received an Infrastructure Loan or Infrastructure Assistance or a combination thereof.

(29) "Region" means one of the geographic areas established by the Department to administer transportation programs.

(30) "Region Manager" means the administrative head of a Region or his or her designee.

(31) "Staff" means Department employees assigned by the Chief Financial Officer to manage the day-to-day operations of the OTIB and the Infrastructure Fund and to evaluate the credit quality or financial feasibility of any Infrastructure Loan or Infrastructure Assistance.

(32) "Statewide Transportation Improvement Program" or "STIP" means the State's transportation preservation and capital improvement program and includes any project scheduling and funding documents related thereto.

(33) "Transportation Project" has the meaning given in ORS 367.010(11).

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0040

Purpose of the Oregon Transportation Infrastructure Fund

(1) The purpose of the Oregon Transportation Infrastructure Fund is to fund transportation solutions, leverage additional funds into Infrastructure, and encourage innovative financing techniques in order to further Oregon's livability and economic competitiveness. In accomplishing this purpose, all Transportation Projects funded by the Oregon Transportation Infrastructure Fund will be required to satisfy all appropriate federal, state and local planning and programming requirements.

(2) To achieve the objectives of the Oregon Transportation Infrastructure Fund, the Department has established the Oregon Transportation Infrastructure Bank.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0050

Administration of Funds

(1) Authority for the day-to-day operations and management of the OTIB and the management of the Infrastructure Fund is delegated to the Chief Financial Officer and Staff.

(2) The Department may expend funds from the Infrastructure Fund for the purposes set forth in ORS 367.015.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0090

Application Procedures

(1) An Applicant may submit an Application for an Infrastructure Loan or Infrastructure Assistance at any time, subject to deadlines, if any, established by the Department.

(2) An Application must be submitted in the manner and form approved by the Department. In addition to the information required by the Application, the Applicant may be required to provide such additional information and supporting documentation concerning the Applicant and the proposed Transportation Project as the Department deems necessary or appropriate in order to enable the Application to be properly evaluated.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0100

Application Evaluation Procedures

(1) Upon receipt of a complete Application, the Department will evaluate the Application to determine whether an Applicant is creditworthy. An Applicant is creditworthy if the Applicant has a satisfactory credit history and sufficient capacity to repay the Infrastructure Loan.

(2) While an Application is pending, the Department may require the Applicant to provide additional information with respect to, or clarification of, any matter pertaining to the Application, the Applicant, the proposed Transportation Project or the financing thereof as the Department determines in its sole discretion to be reasonably necessary, convenient or appropriate. Evaluation of an Application will include an examination of Application information to determine the extent to which an Applicant and the proposed Transportation Project meet the following criteria:

(a) The Transportation Project complies with the local transportation plan and with state land use laws and satisfies all appropriate federal, state and local planning and programming requirements.

(b) The Transportation Project meets any appropriate design standards.

(c) The requested Infrastructure Loan or Infrastructure Assistance will result in the Transportation Project being constructed on a faster time schedule than conventional funding would allow, or the Infrastructure Loan or Infrastructure Assistance will complete the required project financing and allow the Transportation Project to proceed to construction.

(d) The Transportation Project will further the goal of safety in transportation.

(e) The Transportation Project will help manage traffic growth and improve livability.

(f) The Application identifies a revenue stream adequate to repay an Infrastructure Loan or meets the terms of any Infrastructure Assistance that is provided.

(g) The Application identifies Collateral adequate to secure repayment of the Infrastructure Loan.

(h) The Transportation Project will attract new or less conventional capital to Infrastructure funding.

(i) The Infrastructure Loan, if any, has a term acceptable to the Department. A Transportation Project financed with a shorter term Infrastructure Loan will score higher than one financed with a longer term Infrastructure Loan.

(j) The Transportation Project will support the community's economic development.

(k) The Transportation Project will enhance the quality of life in the community.

(L) Unless the Chief Financial Officer finds that financial factors warrant otherwise, if the Applicant is a Private Entity:

(A) The Applicant for an Infrastructure Loan or Infrastructure Assistance must provide adequate security;

(B) An Infrastructure Loan or Infrastructure Assistance will be for no more than fifty percent (50%) of the fair market value of the real property

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Collateral on which the Department has a first lien or twenty-five percent (25%) of the fair market value of the real property Collateral if the Department has a junior lien;

(C) The Applicant must have made a profit after taxes for at least the two years immediately preceding the Application;

(D) The Applicant must have had a positive cash flow from operating activities (earnings before interest and taxes plus depreciation less taxes) for at least two of the last three years immediately preceding the Application;

(E) The Applicant must have a ratio of current assets to current liabilities of at least 1.75 to 1, a ratio of current assets less inventories to current liabilities of at least 1 to 1, and a ratio of total debt to owner's equity of no more than 2 to 1 for at least two of the last three years immediately preceding the Application.

(2) The Department will assign the Application to a Region, the Department's Public Transit Division or their designee as appropriate for evaluation of technical, engineering and planning criteria. The designated assignee will:

(a) Evaluate a Transportation Project or Application according to the Application evaluation criteria established by the Department in OAR 731-030-0100(1); and

(b) Recommend approval or disapproval of the Transportation Project or Application.

(3) The Region Manager, the Public Transit Division Administrator or their designee will notify staff of the results of the evaluation of the Transportation Project and the Application.

(4) Staff will evaluate the economic, financial and creditworthiness criteria and seek assistance from other experts where appropriate.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020
Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0110

Approval Procedures

(1) Staff will combine the results of the evaluation completed under OAR 731-030-0100 into a combined score.

(2) Upon completion of its evaluation and scoring, Staff will forward the Application to the Chief Financial Officer with a recommendation for action based on an analysis of such factors as those listed in OAR 731-030-0110(3), the availability of funds, and OTIB cash flow. A recommendation, or any related approval, may include proposed modifications to the terms of the financial assistance requested by Applicant.

(3) To make a recommendation for approval, staff must find that:

(a) The Applicant and the Transportation Project qualify for assistance from the Infrastructure Fund according to the criteria established under OAR 731-030-0100(1).

(b) The proposed Transportation Project is feasible and a reasonable risk from practical and economic standpoints, and the proposed Infrastructure Loan has a reasonable prospect of repayment according to its terms.

(c) The Applicant's financial resources and management capability appear to be adequate to assure the successful completion and operation of the Transportation Project.

(d) The Applicant is creditworthy.

(e) The Applicant can provide good and sufficient Collateral when appropriate to mitigate risk to the Infrastructure Fund.

(4) After review and consideration of the Staff recommendation, and subject to the availability of moneys in the Infrastructure Fund, the Chief Financial Officer may:

(a) For an Application for an Infrastructure Loan or Infrastructure Assistance for less than \$1 million that will finance a Transportation Project that has been included in the STIP:

(A) Approve the request;

(B) Deny the request; or

(C) Forward a recommendation for action to the Commission.

(b) For any other Application:

(A) Deny the request; or

(B) Forward a recommendation for action to the Commission.

(5) The Commission will consider the recommendation by the Chief Financial Officer on any Application forwarded to it for action and may:

(a) Approve the request; or

(b) Deny the request.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020
Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0120

Project Agreements, Interest Rates and Charges

(1) For an Application approved under OAR 731-030-0110, the Department will make an Infrastructure Loan or provide Infrastructure Assistance from the Infrastructure Fund by entering into an Agreement with the Recipient.

(2) Notwithstanding any provisions of a Staff recommendation under OAR 731-030-0110(2), the Chief Financial Officer will make the final determination of the amount and type of financing awarded, interest rate (if applicable), value and types of Collateral, and schedule of payments, and may impose such further provisions as are necessary or appropriate to insure expenditure of the funds for the purposes set forth in the approved Application and as needed to protect the Infrastructure Fund. Such determination shall not be contrary to any provisions of an approval under OAR 731-030-0110(5)(a). In most cases, the interest rate will approximate the rate for similar obligations. In determining the interest rate for an Infrastructure Loan, the Chief Financial Officer may set the rate to reflect the evaluation of the Transportation Project, the effect of the rate upon the Applicant's ability to finance the Transportation Project, the financial need of the Applicant, and the special circumstances of the Transportation Project.

(3) The Agreement the Department enters into with a Recipient regarding an Infrastructure Loan or Infrastructure Assistance will specify any fees or charges.

(4) The Chief Financial Officer will consider the financial status of the Infrastructure Fund and may delay final award of funds to any Recipient until sufficient funds are available in the Infrastructure Fund. The Department reserves the right to investigate and recommend other sources of funds for all or part of a proposed Transportation Project.

(5) Eligible uses of moneys obtained from or through the assistance of the Infrastructure Fund include, but are not limited to, the cost of acquiring, designing, building and installing any Transportation Project.

(6) A Recipient may request a modification or amendment to an executed Agreement. The request must be made in writing to the Chief Financial Officer for consideration by the Department. The Recipient will be responsible for all costs related to any modification or amendment of the Agreement.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020
Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0130

Accounting, Reporting and Auditing Requirements

(1) The Department will maintain an accounting system for the Infrastructure Fund that complies with generally accepted accounting principles and practices.

(2) A Recipient must separately account for all moneys received from the Infrastructure Fund in project accounts in accordance with generally accepted accounting standards. The Department reserves the right to audit, monitor or otherwise review all project records.

(3) The Department will compile an annual report on the OTIB and make it available to Recipients no later than 90 days after the end of the federal fiscal year. The report will identify that year's Recipients, the amounts, terms and conditions of the Infrastructure Loans and Infrastructure Assistance awarded and project categories.

(4) The Department, in cooperation with the Secretary of State, will conduct or cause to be conducted an annual independent financial and compliance audit of the OTIB's operations. This audit may be conducted in accordance with the Single Audit Act of 1984. This audit will be completed within one year of the end of the state fiscal year.

(5) A Recipient must observe the requirements of state law, if applicable, for retaining and disposing of records.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0150

Waivers

The Chief Financial Officer may waive non-statutory requirement of OAR 731-030-0010 to 731-030-0160 if such a waiver would serve to further the goals and objectives of the OTIB or the Infrastructure Fund.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020
Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

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731-030-0160

Protests

(1) If the Chief Financial Officer denies an Application for an Infrastructure Loan or Infrastructure Assistance, the Applicant may protest the decision to the Director. The protest must be in writing and must be filed within 30 calendar days of notification of the denial. The Director will notify the Applicant of the Director's decision within 30 days of the receipt of the protest.

(2) If the Director affirms the denial of the Application, the Applicant may protest the Director's decision to the Commission. The protest to the Commission must be in writing and must be filed within 30 calendar days of notification of the Director's decision. The Commission will consider the protest at the earliest practical regular meeting of the Commission. The Applicant may appear before the Commission to present additional factual information in support of the Application.

(3) A Commission decision to deny an Application as described in OAR 731-030-0110(5) will not be subject to further administrative review.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010 - 367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04; DOT 3-2012, f. & cert. ef. 6-27-12

731-030-0170

Interagency and Intra-agency Loans

(1) For purposes of OAR 731-030-0170, capitalized terms shall have the respective meanings given in ORS Chapter 367 and OAR 731-030-0030, unless the context clearly indicates otherwise.

(2) An Agency may apply for an Infrastructure Loan or Infrastructure Assistance by following the same procedures as an Applicant and submitting an Application as set forth in 731-030-0090. The Department will evaluate the Agency's Application in the same manner provided in OAR 731-030-0100 and 731-030-0110, giving due consideration, however, to differences in funding sources, available Collateral and mission between an Agency and an Applicant that is a Municipality or Private Entity.

(3) A Department Borrower may request an Infrastructure Loan or Infrastructure Assistance by submitting an Application to the Chief Financial Officer or Staff. Staff will evaluate the Application in the same manner provided in OAR 731-030-0100 and 731-030-0110, giving due consideration, however, to differences in funding sources, available Collateral and mission between the Department Borrower and an Applicant that is an Agency, Municipality or Private Entity.

(4) For an Application approved under this OAR 731-030-0170, the Department will enter into an Agency Contract setting forth the amount of the Infrastructure Loan or Infrastructure Assistance and such additional terms and conditions as the Chief Financial Officer or Staff consider necessary including, but not limited to:

(a) For an Infrastructure Loan, the interest rate, installment payment amount and schedule, maturity date, and any revenues or other moneys pledged or dedicated to repayment of the Infrastructure Loan; and

(b) For an Infrastructure Loan or Infrastructure Assistance, the allowable purposes on which the moneys provided may be spent and the remedies available to the Department in the event the moneys are misspent.

(5) The Department may charge an Agency or Department Borrower for costs to review, process, and service an Application or the Infrastructure Loan or Infrastructure Assistance. An Agency or Department Borrower will pay:

(a) A loan fee of one percent of the amount of the Infrastructure Loan upon disbursement of Infrastructure Loan proceeds;

(b) Charges for credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals; and

(c) Charges specified in the Agreement executed by the Agency or Department Borrower and the Department.

Stat. Auth.: ORS 184.616, 184.619, 367.015 & 367.020

Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350

Hist.: DOT 3-2012, f. & cert. ef. 6-27-12

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

Rule Caption: DMV Records – Available Records, Fees, Processes for Ordering.

Adm. Order No.: DMV 6-2012

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 6-27-12

Notice Publication Date: 5-1-2012

Rules Amended: 735-010-0000, 735-010-0008, 735-010-0010, 735-010-0030, 735-010-0040

Subject: Due to changing technology, these rules contained outdated references to systems that are no longer used. Specifically the changes are:

- ODOT/DMV and DAS have entered into an interagency agreement granting DAS a limited, exclusive license to provide electronic access to certain DMV driving records through the State's Electronic Government web portal (E-Gov portal) authorized under ORS 182.132. DMV previously provided such electronic access through a service known as RADR (Real Time Access to Driving Records). Electronic access to DMV records will be provided through the Driving Record Web Service, a part of the E-Gov portal and no longer provided through RADR. References in OAR 735-010-0030 to "RADR" were removed and replaced with the "Driving Record Web Service."

- DMV updated the name of the system for those who order records through an automated phone system to better reflect how it works. References in OAR 735-010-0040 were updated from "DMV's Automated Voice Exchange (D.A.V.E.)" to the "Interactive Voice Response System (IVR)."

- DMV is no longer providing records on magnetic tapes and any such references in these rules were removed. OAR 735-010-0040 is amended to show that the vehicle record lists and automated meter skips are provided via File Transfer Protocol Secure (FTPS).

The rules were also amended to specify what confidential information is and when confidential or personal information is excluded from a public record.

DMV replaced the phrase "terminated by court notice" in OAR 735-010-0030 as ORS 809.220 was amended by Chapter 355, Oregon Laws 2011 (HB 2137) phrasing it as "notice to reinstate driving privileges."

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-010-0000

What is Used to Calculate the Actual Cost of Providing a Public Record

(1) ORS 192.440 provides that any public body may establish fees reasonably calculated to reimburse it for actual costs in making records available to the public, government agencies or commercial firms.

(2) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will use the following to calculate the actual cost of providing a public record:

(a) All computer costs. This includes programmer/analyst services, and time to run and produce the required record;

(b) All time spent by staff to produce a record. This includes phone time, data entry, and search efforts;

(c) A pro-rata share of DMV's overhead expense; and

(d) All materials which are used to provide a record.

Stat. Auth.: ORS 192.440, 283.110, 802.010, 802.220 & 802.230

Stats. Implemented: ORS 802.230

Hist.: MV 5-1982, f. 1-12-82, ef. 2-1-82; March 1988, Renumbered from 735-032-0020; MV 9-1983, f. 10-5-83, ef. 10-15-83; MV 10-1984, f. 6-29-84, ef. 7-1-84; DMV 6-2012, f. & cert. ef. 6-27-12

735-010-0008

Definitions

As used in division 10 rules, the following definitions apply:

(1) "Bulk distribution" means the distribution of surveys, marketing materials and solicitations, regardless of the medium used for distribution, including but not limited to:

(a) Material distributed to a targeted group of people to tell them about the suitability or quality of a product or service;

(b) Market research which involves contacting individuals;

(c) Nonprofit entities seeking donations of labor, products or money;

or

(d) Political material designed to encourage membership in a political organization, or to gain support for individuals seeking election to public office, or solicit money or labor for a political campaign or election.

(2) "Business entity" means a corporation, organization, firm, association, partnership, governmental agency, lawful commercial enterprise or other legal entity, other than an individual.

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(3) "Business address" means the physical address of the place in which or from which a business entity operates.

(4) "Business name" is the name, including an abbreviation or acronym, by which a business is designated in official records and under which it conducts business.

(5) "Conducting business with DMV" includes any business with DMV that results in the creation of a customer record or change to an existing customer record.

(6) "Confidential Information" includes:

(a) A person's photograph, social security number, mother's maiden name and place of birth;

(b) Records of driver licenses, identification cards or vehicles used for undercover purposes by law enforcement, parole and probation agencies;

(c) The residence address of an individual whose address is protected by law;

(d) Medical information; and

(e) Drug test information.

(7) "County of use" means the county in which a vehicle is primarily used, when that county is:

(a) Other than the county of the owner's residence or business address; and

(b) Other than the county of the vehicle address provided to DMV.

(8) "Customer number" means the distinguishing number assigned by DMV to each individual or business entity for which a customer record has been created.

(9) "Customer record" means the computer record created by DMV at the time an individual or business entity first does business with DMV.

(10) "Descriptive address" means information sufficient to identify the location of a residence or business entity if there is no actual street or rural route address, or to explain where a person lives if the person has no fixed residence.

(11) "Disseminator" means a person whose primary business function is the sale or distribution of information, including personal information in response to an individual record inquiry from a person who is authorized by DMV to receive the information under ORS 802.179.

(12) "DMV" means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.

(13) "Employment address" means the address of the public agency employing a police officer or eligible public employee as provided in ORS 802.250.

(14) "Full legal name" means an individual's first name, middle name(s), and last or surname, without use of initials or nicknames.

(15) "Insurance support organization," as used in ORS 802.179(6), means a person who regularly engages in assembling or collecting information about a natural person for the primary purpose of providing the information to an insurer or insurance agent in connection with claims investigation activities, antifraud activities, underwriting or rating. "Insurance support organization" does not include an insurer, an insurance agent, a governmental institution, medical care institution or medical professional.

(16) "Legitimate business" means a lawful business enterprise operating in compliance with federal, state and local law.

(17) "Mailing address" means an address other than an actual residence or business address to which a person or business entity mail delivered, including a post office box or address of a service provider.

(18) "Motor vehicle record" means any record that pertains to a grant of driving privileges, an identification card, vehicle title or vehicle registration issued by DMV. "Motor vehicle record" does not mean a record pertaining to a manufactured structure.

(19) "Person" means an individual, an organization or an entity but does not include the State of Oregon or any agency thereof.

(20) "Personal information" means the following information that identifies an individual:

(a) Driver license, driver permit, identification card or customer number;

(b) Name;

(c) Address (excluding five-digit zip code); and

(d) Telephone number.

(21) "Primary residence" means the state, jurisdiction or physical location where an individual lives, during any 12-month period, more than he or she lives elsewhere during that period.

(22) "Records list" means a list of driver or vehicle records compiled by selecting records that meet one or more general criteria, where the criteria is not specific to any one person or vehicle. Records lists would include such things as a list of vehicle records of a given manufacturer or a

list of licensed drivers over the age of 65. A records list would not include records that were selected by a specific identifier, such as an individual's driver license number or a vehicle's registration plate number.

(23) "Registration address" means the vehicle address, if one is provided or if a vehicle address is not provided:

(a) The vehicle owner's residence address if the owner is an individual; or

(b) The vehicle owner's, business address if the owner is other than an individual. Some examples may include a business, school district, organization or church.

(24) "Residence address" means the actual address at which an individual resides more than he or she lives elsewhere during a 12-month period. If an individual resides an equal amount of time at two or more addresses, the individual must determine which address is his or her residence address and use that as the residence address in conducting business with DMV. A residence address must not be that of a service provider, except for purposes of titling or registering a vehicle owned by the service provider or obtaining an Oregon driver license, driver permit or identification card by the service provider.

(25) "Service Provider" means a business which facilitates the collection or delivery of mail, or businesses that provide vehicle registration services for another party. A mail service is considered to be a Service Provider.

(26) "Vehicle address" means the residence or business address where the vehicle is primarily housed, or from where the vehicle is primarily dispatched when different than the actual residence or business address of the owner.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 803.370 & 807.050
Stats. Implemented: ORS 802.175 - 802.270, 803.220, 803.370, 807.050, 807.420, 807.560, 807.725 & 821.080
Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 6-1999, f. & cert. ef. 12-17-99; DMV 10-2000, f. & cert. ef. 9-21-00; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 6-2012, f. & cert. ef. 6-27-12

735-010-0010

Exclusions From and Requirements to Obtain a Public Record

(1) DMV will not disclose confidential information except as provided by law.

(2) DMV will only disclose personal information, as defined in OAR 735-010-0008, if the record is ordered by the individual whose record it is or if the person ordering the record qualifies to receive personal information. Otherwise the record will be sanitized with the personal information removed.

(3) Fees for records must be paid in advance or billed to an account, except:

(a) If a fee is not set by law, DMV reserves the right to waive a charge for records when the cost to collect the fee would be more than the cost to provide a record;

(b) DMV may provide information without charge on an exchange basis, to other states, federal agencies, or appropriate designee, or motor vehicles associations if DMV, in turn, is not charged for information it receives; or

(c) DMV will accept a purchase order number if the purchaser is a government agency.

(4) A request for a public record must allow DMV a reasonable period of time to provide the record so that DMV's activities or operations are not unduly disrupted.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 283.110, 802.010, 802.220, 802.230 & 802.530
Stats. Implemented: ORS 802.220
Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 25-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0025; DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 6-2012, f. & cert. ef. 6-27-12

735-010-0030

Types of Driver and Identification Card Records Available and Their Fees

This rule specifies the types of driver records available from DMV's driver records database and the fee amounts for the records:

(1) Abstract of Employment Driving Record – Computer-produced record of an individual's employment driving record. The record includes employment-related accidents, suspensions and convictions for violation of motor vehicle laws, as set forth in ORS 802.200(9). The record covers the three-year period preceding the date of the request. Miscellaneous administrative entries may also be included as determined by DMV. The record does not include convictions for offenses that result in a mandatory revocation or suspension under ORS 809.409, 809.411, 809.413 and 813.400. The record will include information of a positive drug test result, posted in accordance with ORS 825.412, only if the requestor provides written per-

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mission from the person who was subject to the drug test. The fee for each record is:

(a) \$2 for a certified record ordered by mail or through DMV's Interactive Voice Response System (IVR);

(b) \$2 for an uncertified record provided through the Driving Record Web Service;

(c) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(2) Abstract of Non-employment Driving Record – Computer-produced record of an individual's non-employment driving record. The record includes motor vehicle accidents, convictions for violations of motor vehicle laws, other than those included in the employment driving record, and DUII diversion agreements for the three years preceding the date of the record request. The record also includes suspensions, revocations or cancellations of driving privileges, except those suspensions where DMV has received notice to reinstate the person's driving privileges under ORS 809.220. Miscellaneous administrative entries may also be included as determined by the department. The fee for each record is:

(a) \$1.50 for a certified record ordered by mail or through IVR;

(b) \$2 for an uncertified record provided through the Driving Record Web Service.

(c) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(3) Insurance Abstract of Non-employment Driving Record – Computer-produced record containing certain entries of an individual's non-employment driving record as described in section (2) of this rule. The record includes motor vehicle accidents, convictions for violations of motor vehicle laws, other than those included in the employment driving record, DUII diversion agreements and suspensions, revocations or cancellations of driving privileges, except those suspensions where DMV has received notice to reinstate the person's driving privileges under ORS 809.220. This record is available only to insurers or insurance support organizations. An individual may request his or her own insurance abstract to obtain an insurance discount under ORS 746.265(3). The fee for each record is:

(a) \$1.50 for a certified record ordered by mail;

(b) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(4) Driver License Information Report – Information on the report includes driver name, address, license number, license type, license expiration date, license restrictions, license issue date and status of license. Driver license information may be provided orally or by computer-produced certified print. The fee for each report is:

(a) \$1.50 for a computer-produced certified report or for an oral report from a DMV employee requested in person or over the phone. Information over the phone will only be provided to a record account holder. DMV will charge a search fee of \$1.50 for any information requested under this paragraph but not found in DMV's driver records database;

(b) \$1.20 for a report obtained through IVR. DMV will charge a search fee of \$1.20 for any information requested under this paragraph but not found through IVR.

(5) Identification Card (ID card) Information Report – Information on the report includes ID card holder's name, address, ID card number, ID card expiration date, issue date, and status of ID card. ID card information may be provided orally through IVR or by computer-produced certified print. The fee for each report is:

(a) \$1.50 for a computer-produced certified report or for an oral report from a DMV employee requested in person or over the phone. Information over the phone will only be provided to a record account holder. DMV will charge a search fee of \$1.50 for any information requested under this paragraph but not found in DMV's records database;

(b) \$1.20 for a report obtained through IVR. DMV will charge a search fee of \$1.20 for any information requested under this paragraph but not found in IVR.

(6) Oregon Police Traffic Crash Report – The fee for a copy of an Oregon Police Traffic Crash Report is \$9.50 for a certified copy or \$8.50 for an uncertified copy. DMV will charge a search fee of \$8.50 for an Oregon Police Traffic Crash Report that is requested but not found. The fee for bulk requests for copies of Oregon Police Traffic Crash Reports filed with DMV on a specific day are \$.50 per report, plus postage, and are not available in certified form.

(7) Driver License/ID Card Application History – The fee for a person's application history which includes copies of any application for an original, renewal or duplicate driver license or ID card is \$18.50 for a certified history or \$17.50 for an uncertified history.

(8) Miscellaneous Driver Document Copy – Copies of any document or transaction related to a person's driving record, driver license, or driving privilege. The fee for a miscellaneous driver document is \$5 for a certified copy or \$4 for an uncertified copy.

(9) Driver Purged File History – Computer-produced print containing all entries shown on the computer file for a driver, except those entries exempted under the Oregon Public Records Law, ORS 192.410 to 192.505. The fee for a driver purged file history is \$2. DMV will charge a search fee of \$1.50 for any driver file requested under this subsection but not found in DMV's driver records database.

(10) Court Print – Computer-produced record of an individual's employment and non-employment driving record. The record includes convictions for major traffic offenses, DUII diversion agreements and any alcohol rehabilitation entries for the ten years preceding the date of the request, and convictions for minor traffic offenses and motor vehicle accidents for the five years preceding the date of the request. The record also includes suspensions, cancellations, revocations and miscellaneous administrative entries, but does not include information exempt from disclosure under the Oregon Public Records Law. Court Print with CDL Medical Certification – Computer-produced record of a CDL holder's employment and non-employment driving record as described above. The record also includes medical certification data that shows if the CDL holder is medically qualified to drive commercial motor vehicles. The fee for each record is:

(a) \$3 for a certified print ordered by mail, through IVR or through the Automated Reporting Service (A.R.S.);

(b) \$2 for a record accessed through the Driving Record Web Service;

(c) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(11) Suspension Package – Certified court print and certified copies of any of the following documents needed for a court proceeding: a suspension, revocation or cancellation notice; returned envelope, signed receipt, or affidavit showing service of the notice; hardship permit application; license restrictions; or any letter sent by DMV informing the person of a suspension, revocation or cancellation. The fee for a suspension package is \$11.50. There is a \$1.50 search fee if a court print requested under this subsection cannot be found in DMV's driver records database;

(12) Driver Records List – Computer produced list of driver names, addresses or other record information created using selection criteria. For example, the selection criteria may be the names and addresses of all licensed drivers of a specific age group. The following apply to a request for a driver records list:

(a) The requester must describe how the list will be used. If the purpose of the list is for bulk distribution, as defined in OAR 735-010-0008, the list will only include individuals who have requested that their personal information be provided to bulk distributors.

(b) The requester must provide paper or magnetic tape. No more than 50,000 records will be provided on paper.

(c) DMV's computer system must be programmed to use the selection criteria requested. If the selection criteria requested requires additional computer programming, DMV will not provide the list unless DMV computer programming resources are available and the requester pays the actual programming costs as set forth in OAR 735-010-0000.

(d) The fee for a driver records list furnished via File Transfer Protocol Secure (FTPS) is \$700.

(13) Purged Driver Record Information – Copy of a microfilmed driving record containing entries that have been purged from DMV's driver records database. The fee for a purged information driving record is \$2.50 for a certified copy or \$1.50 for an uncertified copy.

(14) Insurance Information Search – A search of DMV records to identify the insurance company and policy number for a vehicle or individual. This information may be provided orally by a DMV employee if requested in person or over the phone or by letter from DMV. The fee for an insurance information search is \$10, regardless of whether the information is actually found in DMV records.

(15) Automated Reporting Service (A.R.S) – A court print sent automatically to an enrolled record account holder when an accident, conviction, DUII diversion or suspension, revocation or cancellation is posted to a listed individual's driving record. The fee for an A.R.S. court print is \$3.00. If the account holder requests that DMV add or delete an individual from A.R.S. there is a \$2.00 fee. There is no fee to add or delete an individual if the record account holder uses DMV's online system.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.010, 802.179, 802.183, 802.200, 802.220 & 802.230

Stats. Implemented: ORS 802.200, 746.265, 802.230, 802.220 & 825.412

Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 8-1985, f. & ef. 8-1-85; MV 20-1987, f. 9-21-87, ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0035; MV 44-1989, f. & cert. ef. 10-16-89; MV 15-1990, f. 8-30-90, cert. ef. 9-1-90; MV 12-1992, f. &

ADMINISTRATIVE RULES

cert. ef. 10-16-92; DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 20-2001, f. & cert. ef. 10-18-01; DMV 1-2002, f. & cert. ef. 1-17-02; DMV 5-2005, f. & cert. ef. 2-16-05; DMV 16-2009, f. 9-29-09 cert. ef. 10-1-09; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 6-2012, f. & cert. ef. 6-27-12

735-010-0040

Types of Vehicle Records Available and Their Fees

The types of vehicle records available and the fees for these records are:

(1) Vehicle Record – Includes vehicle description, registered owner, security interest holders, lessors and other related information. Vehicle record information may be provided orally or by computer-produced certified print:

(a) The fee for a certified vehicle record ordered by mail or through DMV's Interactive Voice Response System (IVR) is \$4. There is a \$2.50 search fee if the vehicle record ordered cannot be found in the department's computer file;

(b) The fee for vehicle record information provided orally by an operator to an account user is \$2.50. There is a \$2.50 search fee if the vehicle record ordered cannot be found in the department's computer file; and

(c) The fee for vehicle record information provided orally through IVR is \$2.00. When IVR is used and the vehicle record ordered cannot be found in the department's computer file, a \$2 search fee will be charged.

(2) Vehicle Title History – Copies of all title transactions to the extent DMV has kept such records. Current owner information will be provided by computer print at no extra charge. The fee for a vehicle title history if not certified is \$22.50, \$23.50 if certified;

(3) Previous Owner Information – Copies of the last title transaction showing prior owner and a computer print with the current owner information. The fee for previous owner information if not certified is \$14, \$15 if certified;

(4) Insurance Information Search – A search of the records to identify the insurance company and policy number provided to DMV for a vehicle or individual. This information may be provided orally or by letter. The fee for an insurance information search is \$10;

(5) Miscellaneous Vehicle Document – Copies of any transaction dealing with motor vehicle business. The fee for a miscellaneous vehicle document if not certified is \$4, \$5 if certified;

(6) Meter Skip – A computer-produced print indicating vehicle description, registered owner name, address, expiration date and title date. No security interest holder information is given. A request for this information must specify "Meter Skip" or it will be assumed security interest holder information is needed, and the requester will be charged for a complete vehicle record or vehicle title history. Requests must be submitted in writing and in all cases the vehicle registration plate number must be provided. The fee for a meter skip is \$1.50;

(7) Automated Meter Skips – Includes vehicle description, registered owner name, address, expiration date and title date. No security interest holder information is given. Requests for automated meter skips must be made via File Transfer Protocol Secure (FTPS). The fee for an automated meter skip is \$.02 (\$20 per thousand);

(8) Vehicle Records List – A records list of vehicle records meeting some specific criteria set by the requester, such as a list of all vehicle records of a particular year or make. Records lists are produced upon request if available selection criteria are used. The requester shall describe how the records list will be used. If the purpose of the records list is for bulk distribution as defined in OAR 735-010-0008, the records list shall only include individuals who have requested their names and addresses be provided on such lists. The vehicle records list is furnished via File Transfer Protocol Secure (FTPS). The fee for a vehicle records list using available criteria is \$700. Records lists that require additional programming will not be provided unless other DMV priority demands on available data processing resources have been met. The fee for a vehicle records list that requires additional programming will be determined by the actual cost to produce the list using the criteria set forth in OAR 735-010-0000;

(9) Odometer Information Search – Includes a search of the department's records for the most recent odometer reading provided to the DMV for a given vehicle. This information may be provided orally, by computer certified print, or copies of documents in the department's files. The fee for an odometer information search is \$2, \$3 if the document copies are certified. The \$2 fee will be required whether or not the record contains an odometer reading;

(8) Previous Odometer Reading Search – Includes a search of the department's records for the most recent odometer reading supplied to DMV, and the one just previous to it for a given vehicle. Copies of the documents reflecting the readings will be provided. The fee for a previous

odometer reading search if not certified is \$3.50, \$4.50 if certified. The \$3.50 fee will be required regardless of whether previous records contain odometer information; and

(9) Odometer History Search – Includes a search of the vehicle records for all odometer readings provided to DMV on or after January 1, 1986, for a given vehicle. Copies of all previous odometer readings will be provided. The fee for an odometer history search if not certified is \$25, \$26 if certified. A \$25 fee will be required regardless of whether any odometer readings are found.

Stat. Auth.: ORS 184.616, 814.619, 192.440, 802.179, 802.183, 802.220 & 802.230

Stats. Implemented: ORS 802.177, 802.179, 802.200, 802.220 & 802.230

Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 9-1985, f. & ef. 8-1-85; MV 5-1986, f. & ef. 3-3-86; MV 20-1987, f. 9-21-87, ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0040; MV 44-1989, f. & cert. ef. 10-16-89; MV15-1990, f. 8-30-90, cert. ef. 9-1-90; MV 12-1992, f. & cert. ef. 10-16-92; DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 20-2001, f. & cert. ef. 10-18-01; DMV 6-2012, f. & cert. ef. 6-27-12

Department of Transportation, Highway Division Chapter 734

Rule Caption: Highway Approach Permitting, Access Control and Access Management.

Adm. Order No.: HWD 8-2012

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Subject: The 2011 Oregon legislature substantially changed the authorizing legislation for how the Oregon Department of Transportation issues permits for access to state highways. The OTC adopted temporary rules on December 21, 2011. Adoption of the proposed permanent rules is necessary to bring the agency's processes into compliance with the legislation.

Rules Coordinator: Lauri Kunze—(503) 986-3171

ADMINISTRATIVE RULES

734-051-1010

Authority for Rules

Division 51 rules are adopted under the director's authority contained in ORS 374.310(1).

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345, 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1020

Purpose and Intent of Rules

(1) Purpose. Division 51 establishes procedures, standards, and approval criteria used by the department to govern highway approach permitting and access management consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), statewide planning goals, acknowledged comprehensive plans, and the Oregon Highway Plan (OHP).

(2) Intent. The intent of division 51 is to provide a highway access management system based on objective standards that balances the economic development objectives of properties abutting state highways with the transportation safety and access management objectives of state highways in a manner consistent with local transportation system plans and the land uses permitted in applicable local comprehensive plan(s) acknowledged under ORS Chapter 197.

(3) Oregon Highway Plan. The Oregon Highway Plan serves as the policy basis for implementing division 51 and guides the administration of access management rules, including mitigation and public investment, when required, to ensure highway safety and operations pursuant to this division.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345, 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1030

Administration of Rules

(1) Approaches Subject to Division 51. Private approaches in existence and applications for private approaches filed after June 29, 2012 are governed by the rules of division 51. Public approaches do not require an Approach Permit but are subject to the provisions of OAR 734-051-1050.

(2) Grandfathered Approaches. Division 51 rules do not affect existing rights of owners of grandfathered approaches, except where the rules specifically state their application to grandfathered approaches, such as the rule for changes of use of an approach under OAR 734-051-3020. An approach no longer qualifies as grandfathered once the department issues a permit to operate under division 51 rules or the department acquires access control as defined under OAR 734-051-1070.

(3) Compliance with Land Use Requirements. Approval of a property for a particular use is the responsibility of city, county, or other governmental agencies, and an applicant must obtain appropriate approval from city, county, or other governmental agencies having authority to regulate land use. Approval of an application for an approach to a state highway, or issuance of a construction permit or a permit to operate for the same, is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(4) General Requirements for Notices of Appealable Decisions and Other Written Communication. The department will provide notice of appealable decisions by certified mail to the applicant. Notice of non-appealable decisions and other written communication will be by first class mail, unless written agreement is made with the applicant for such communication through electronic means such as email.

(5) Reasonable Access. Pursuant to ORS 374.310, the division 51 rules may not be exercised so as to deny any property that has a right of access reasonable access to the highway. ORS 374.312 authorizes adoption of rules establishing criteria for reasonable access consistent with 374.310. The rules under OAR 734-051-4020 address reasonable access solely in the context of the issuance of approach permits and do not affect whether access may be reasonable for other purposes or under other reviews.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1040

Relationship to Local Jurisdiction Rules and Regulations

(1) Where ODOT and Local Jurisdiction Agree on Standards or Requirements. Where ODOT and a local jurisdiction have agreed to access spacing standards, sight distance standards or channelization requirements in an adopted access management plan or facility plan that are different that

the adopted standards in this rule, the agreed upon standard will be considered consistent with the standards adopted by this rule and with OAR 660-012-0015 and shall be applied to the state highways within that jurisdiction.

(2) Where Local Jurisdiction Standards or Requirements Exceed OAR 734-051. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that require greater distances than the distances adopted by these rules or allow less access to the state highway than the standards adopted in these rules, the local standards shall be considered to be consistent with the state standards and with OAR 660-012-0015 and shall be applied to state highways within that jurisdiction.

(3) Where OAR 734-051 Exceeds Local Jurisdiction Standards or Requirements. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that result in distances that are less than the distances adopted by these rules or provide greater access to the state highway than those standards adopted by these rules, the local standards shall be deemed to be inconsistent with these rules and with OAR 660-012-0015 and shall not be applied to state highways within the local jurisdiction.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, Ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1050

Procedure to Obtain a Permit to Construct or Modify a Public Approach

(1) Purpose. This rule describes the procedures to obtain a Permit to Construct a new public approach or modify an existing public approach on state highway right of way. This rule does not supersede any existing agreements between the department and a local jurisdiction for maintenance or other responsibilities related to a public approach.

(2) Applicability. This rule applies to construction and modification of a public approach as defined in OAR 734-051-1070.

(3) Permit Requirements.

(a) A right of access is required to obtain a Permit to Construct a public approach.

(b) A Permit to Construct is required to construct or modify a public approach on state highway right of way.

(c) A local jurisdiction is not required to obtain an Permit to Operate from the department for ongoing operation of a new or existing public approach. However, the department may issue a Permit to Operate upon agreement with the local jurisdiction that a Permit to Operate is a preferred means of documenting any terms and conditions related to the approach.

(4) Agreements for Public Approaches

(a) The city or county with jurisdiction of the public approach shall contact the department District Office regarding the proposed work within the state highway right-of-way.

(b) The Department shall notify the local jurisdiction of all documents and approvals required to obtain a Permit to Construct.

(c) The city or county with jurisdiction of the public approach may enter into an agreement with the department that addresses responsibilities, obligations and coordination that may include, but is not limited to the following:

(A) Financing for the project;

(B) Development of a traffic impact analysis, with a time horizon sufficient to ensure the approach has adequate operational life.

(C) Preliminary project matters, including but not limited to field surveys, environmental studies, traffic investigations, acquisition of all necessary right-of-way, and identification and acquisition of required permits;

(D) Determinations regarding the character or type of traffic control devices to be used, and who has the authority to place or erect them upon state highways, and maintain and operate them;

(E) Development and approval of final plans including but not limited to paving, pavement marking, signing, sidewalks, curbs, lighting, storm drain facilities, landscaping and any other construction details;

(F) Responsibility and manner of providing insurance and bonding;

(G) Responsibility for preparation of the contract and bidding documents, advertising for construction bid proposals, award of contracts, payment of contractor costs, furnishing of construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract;

(H) Ownership, maintenance and responsibility for improvements and constructed elements associated with the public approach; and,

(I) Exchange and transmittal of final construction drawings.

ADMINISTRATIVE RULES

(d) The department shall issue a Permit to Construct upon receipt and approval of all required submissions from the local jurisdiction.

(5) Appeals. A local jurisdiction may appeal a department decision to deny a Permit to Construct or the terms and conditions of a Permit to Construct through a contested case hearing as set forth in OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1060

Delegation of Permit Authority to Local Jurisdiction

(1) Delegation of Permit Authority. The department and a local government may enter into an intergovernmental agreement setting provisions for and allowing the local government to issue approach permits for private approaches to regional and district highways, when it is determined by the department and a local jurisdiction that it is in the best interest of highway users.

(2) Application of State Requirements. Intergovernmental agreements developed pursuant to OAR 734-051-1060(1) must provide that permits issued by the local government will be consistent with the highway plan; these administrative rules; state statutes; and local transportation system plans acknowledged under ORS 197.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1070

Definitions

(1) "Access Control" means that the right of access between a property abutting the highway and the highway has been acquired by the department or eliminated by law.

(2) "Access Management Strategy" means a project delivery strategy developed by the ODOT project team that includes the official project access list and necessary improvements that will occur primarily within the highway right of way.

(3) "Access Management Plan" means a plan adopted by the Oregon Transportation Commission (OTC) in coordination with affected local governments for managing access on a designated section of highway or within the influence area of an interchange. An access management plan may establish a unique access plan and access management standards for the designated section of highway or influence area of an interchange, and may be more stringent than standards adopted under OAR 734-051-4020. It may be developed independent of or in conjunction with a highway or interchange project; however, an access management plan is not a highway or interchange project.

(4) "Alternate Access" means the right to access a property by means other than the proposed approach. It may include an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, a local road, or an alley, and may be in the form of a single or joint approach. The existence of alternate access is not a determination that the alternate access is "reasonable" as defined in ORS 374.310.

(5) "Annual average daily traffic" means highway traffic volumes as reported in the most recent edition of the transportation volume tables published annually by the department.

(6) "Appealable decision" means a final decision by the department where the applicant has a right to a dispute resolution procedure to review the department's decision. Appealable decisions include:

(a) A decision to deny an application for an approach permit;

(b) A decision to deny an application for a deviation from approach permitting standards;

(c) A decision to impose mitigation measures as a condition of approval of an approach permit or for a deviation from approach permitting standards;

(d) A decision to close or remove a permitted or grandfathered approach; or

(e) A decision to modify a construction permit.

(7) "Applicant" means a person, corporation, or other legal entity with a legal property interest, including a lease, option or reservation of access, to land abutting the highway that applies for an approach permit or a deviation from approach permitting standards, or their designated agent.

(8) "Application" means a completed application form for state highway approach including any required documentation and attachments nec-

essary for the department to determine if the application can be deemed complete.

(9) "Approach" means a legally constructed public or private connection to the highway. A private approach must be recognized by the department as grandfathered or existing under a valid permit to operate.

(10) "Average Daily Trips" means the total of all one-direction vehicle movements with either the origin or destination inside the study site that includes existing, primary, pass by, and diverted linked trips and is calculated in accordance with the procedures contained in Trip Generation, 8th Edition: An ITE Informational Report; and Trip Generation Handbook, 2nd Edition, both published by the Institute of Transportation Engineers (ITE). Adjustments to the standard rates in the ITE publications for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the ITE procedures. Adjustments to the standard rates for multi-use internal site trips may be allowed if calculated in accordance with ITE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.

(11) "Channelization" means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.

(12) "Classification of highways" means the department's state highway classifications defined in the Oregon Highway Plan.

(13) "Commission" means the Oregon Transportation Commission.

(14) "Connection" means an existing permitted, grandfathered or unpermitted means of providing vehicular access to and/or from a highway and an abutting property.

(15) "Construction Permit" means a permit to construct or modify a state highway approach including all attachments, required signatures, and conditions and terms.

(16) "Crash history" means at least the three most recent years of crash data recorded by the department's crash analysis and reporting unit.

(17) "Day" means calendar day, unless specifically stated otherwise.

(18) "Deemed complete" means acknowledgement by the department that it has received all required information from the applicant for a complete application for an approach permit or for a request for a deviation from approach permit standards.

(19) "Department" or "ODOT" means the Oregon Department of Transportation.

(20) "Deviation" means an exception from the access management spacing, sight distance or channelization standards.

(21) "Director" means the director of the Oregon Department of Transportation.

(22) "District highway" means a state highway that has been classified by the commission as a district highway in the Oregon Highway Plan.

(23) "Division 51" ("this division") means Oregon Administrative Rules (OAR) 734-051-1010 through 734-051-7010.

(24) "Expressway" means a state highway that has been designated by the commission as an expressway in the Oregon Highway Plan.

(25) "Fair Market Value" means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy.

(26) "Freeway" means a route or segment of highway that is completely access controlled and access limited to grade separated interchanges.

(27) "Freeway or Expressway ramp" means all types, arrangements, and sizes of turning roadways that connect to a freeway or expressway interchange.

(28) "Functional Area of an Intersection" means the intersection and the area beyond the intersection that comprises decision and maneuver distance, plus any required vehicle storage length.

(29) "Grandfathered approach" means a legally constructed approach existing prior to 1949. A property owner has the burden to prove a driveway is grandfathered based upon existence prior to 1949. For purposes of this division, grandfathered approaches also include driveways presumed in compliance as set forth in OAR 734-051-5120(7) and driveways intended to remain open that were improved in conjunction with a department project prior to April 1, 2000, as set forth in OAR 734-051-5120(9).

(30) "Grant of Access" means the conveyance of a right of access from the department to an abutting property owner.

(31) "Highway mobility standards" mean the performance standards for maintaining mobility as adopted by the commission in the Oregon Highway Plan.

(32) "Highway peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week, or the thir-

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tieth (30th) highest hourly traffic volume on a rural roadway typically observed during a year.

(33) "Highway designation" means a designation made by the Oregon Transportation Commission to a defined route or segment that is in addition to highway classification and that modifies the system management goals for the designated part of the highway. Highway designations include but are not limited to expressways, freight routes, special transportation areas, scenic routes and lifelines.

(34) "Indenture of Access" means a deeded conveyance to the abutting property owner to change the location, width, or use restrictions of a reservation of access. Removal of a farm crossing or farm use restriction from a reservation of access requires a grant of access.

(35) "Infill" ("Infill Development") means development of vacant or remnant land passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(36) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(37) "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(38) "Interchange Area Management Plan" means a plan to manage the safe, efficient operations, functional integrity and public investment of a grade-separated interchange. An interchange area management plan may be developed independent from or in conjunction with an interchange project and may include plans to allow for or develop local street connectivity, local street improvements and land use regulations. An interchange area management plan is adopted as a facility plan by the commission and is not in of itself an interchange project.

(39) "Intersection" means an at-grade connection of a public or private road to the highway.

(40) "Interstate highway" means a state highway that has been classified by the commission as an interstate highway in the Oregon Highway Plan.

(41) "Land Use Action" means an action by a local government or special district concerning the adoption, amendment or application of the statewide planning goals, a comprehensive plan provision or a land use regulation including zoning, development or subdivision codes.

(42) "Land Use Regulations" means local jurisdiction zoning and development codes, including regulation of land use, zoning, subdivisions, land partitions, access, site plans, and similar regulations adopted pursuant to ORS 197, for cities, and ORS 215, for counties.

(43) "Median" means the portion of the roadway separating opposing traffic streams.

(44) "Mitigation Measure" means an improvement, modification, or restriction set forth in OAR 734-051-3070 and required by the department or initiated by an applicant necessary to offset impacts of the development and provide for safe operation of the highway and proposed approach. Mitigation measures may be a condition of approval for a deviation from approach permitting standards or an application for an approach permit.

(45) "Move in the direction of" means a change in an existing approach or unpermitted connection to a property abutting the highway that would bring the connection to the property closer to conformance with existing highway standards, pursuant to OAR 734-051-4020.

(46) "Oregon Highway Plan" means the Oregon Highway Plan adopted by the Oregon Transportation Commission, pursuant to ORS 184.618.

(47) "Peak hour", for the purpose of approach applications made under OAR 734-051-3020 (Change of Use), means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(48) "Permit to Construct" means a permit that is issued by the department that includes all attachments, required signatures, conditions and terms, and any bond and insurance documentation provided by the applicant as required by the department to construct or modify an approach and any related mitigation within the state highway right of way.

(49) "Permit to Operate" means a permit issued by the department to operate, maintain and use an approach to the state highway, including all required signatures and attachments, and conditions and terms. A permit to operate is not required for a public approach but the department may issue a permit to operate for a public approach upon agreement with the governing city or county.

(50) "Permittee" means a person, corporation, or other legal entity holding a valid Permit To Operate including the owner or lessee of the property abutting the highway or their designated agent.

(51) "Permitted approach" means a legally constructed approach connecting to a state highway for which the department has issued a valid permit to operate.

(52) "Planned" road or street means a highway, road, street or alley identified in an adopted corridor plan, comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197 but has not been constructed.

(53) "Posted speed" means the statutory speed established by ORS 811.105 or 811.180, or the designated speed established by 810.180.

(54) "Prior use" of a connection means the number of peak hour or average daily trips authorized by the permit issued by the department at the date the permit to operate was issued, or number of trips recognized by the department for a grandfathered use at the date the approach was legally established. The determination of prior use may be based on a valid permit to operate, written documentation from ODOT recognizing a grandfathered use, or other written documentation establishing ODOT's determination of prior use. For unpermitted connections, the department will establish prior use.

(55) "Private approach" means an approach that is recognized by the department as grandfathered or existing under a valid permit to operate and that serves one or more properties and that is not a public approach.

(56) "Private road crossing" means a privately owned road designed for use by trucks that are prohibited by law from using state highways, county roads or other public highways.

(57) "Professional Engineer", for the purpose of OAR 734-051, means a person registered and holding a valid license to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325, with expertise in traffic engineering.

(58) "Project Delivery" means the allocation of resources to plan and construct new highways or modify and improve existing highways.

(59) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to and from a highway. An existing city street or county road connection must be under the authority of the city or county to be considered a public approach. A planned city street or county road must be consistent with OAR 731-051-1070(52), included as part of a corridor plan, local transportation system plan or comprehensive plan, and must be or come under the authority of the city or county to be considered a public approach.

(60) "Receipt of an application" means the date the department date-stamps an application as received.

(61) "Redevelopment" ("Infill Redevelopment") means the act or process of changing an existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(62) "Region Access Management Engineer" means a professional engineer employed by the department who by training and experience has comprehensive knowledge of the department's access management rules, policies, and procedures, or a professional engineer as specified in an intergovernmental agreement delegating permitting authority as set forth in OAR 734-051-1060.

(63) "Region Manager" means the person in charge of one of the department's Transportation Regions or designated representative.

(64) "Regional highway" means a state highway that has been classified by the commission as a regional highway in the Oregon Highway Plan.

(65) "Reservation of Access" means a right of access to a specific location in an area where the department has acquired access control subject to restrictions that are designated in a deed. A reservation of access may include a use restriction limiting the right of access to a specified use or restriction against a specified use. A reservation of access affords the right to apply for an approach but does not guarantee approval of an application for state highway approach or the location of an approach.

(66) "Right of access" means the property right of an abutting property owner to ingress and egress to the roadway. A right of access includes a common law right of access, or may be conveyed through operation of law or by deed as a reservation of access, or grant of access.

(67) "Right of way" means real property or an interest in real property owned by the department for the purpose of constructing, operating and maintaining public transportation facilities.

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(68) “Rule, this” (“this rule”) means the part of OAR 734, division 51, as designated by the four-digit suffix, in which the reference to “this rule” appears. For example, this rule (“Definitions”) is OAR 734-051-1070.

(69) “Rural” means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010.

(70) “Sight distance” means a length of highway that a driver can see with an acceptable level of clarity.

(71) “Signature” means the signature of the identified signer or authorized officer of the corporation or partnership and must include the name of the corporation or partnership licensed as set forth in ORS 60.111, and which maintains a registered agent and registered office in this state.

(72) “Spacing standards” means the minimum distance required between a proposed private approach and the center of the nearest existing private connection, other proposed approach, or public approach on the same side of the highway in both directions, as set forth in OAR 734-051-4020.

(73) “Special Use Approach” means an approach that is intended to provide vehicular access for a specific use and for a limited volume of traffic. Such uses are determined by the department and may include emergency services, government, and utility uses. Mitigation required as a part of an approach permit approval or a condition on a construction permit does not by itself create a “special use approach.”

(74) “State highway” means a highway that is under the jurisdiction of the Oregon Department of Transportation.

(75) “Statewide highway” means a state highway that has been classified by the commission as a statewide highway in the Oregon Highway Plan.

(76) “Temporary approach” means an approach that is constructed, maintained, and operated for a specified period of time not exceeding two years, and removed at the end of that period of time.

(77) “Traffic Impact Analysis” means a report prepared by a professional engineer that analyzes existing and future roadway conditions.

(78) “Trip” means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property.

(79) “Unincorporated community” means a settlement that is not incorporated as a city and that lies outside the urban growth boundary of any city.

(80) “Unpermitted Connection” means an existing connection for which ODOT has not issued a Permit to Operate or recognized as grandfathered under OAR 734-051-1070(29).

(81) “Urban” means the area within the urban growth boundary, within a Special Transportation Area of an unincorporated community, or within an Urban Unincorporated Community defined in OAR 660-022-0010.

(82) “Vehicular Access” means the location where motorized vehicles move to and/or from a street, roadway, highway or alley and an abutting property.

(83) “Workday” means Monday through Friday and excludes holidays and days state offices are closed.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-2010

General Provisions

(1) Right of Access Required for Private Approach. In order for the department to approve an application requesting a private approach, the property for which application is made must have a right of access to the state highway as defined in OAR 734-051-1070. A right of access does not guarantee approval of an approach permit. Where no right of access exists, an application for a grant of access must be submitted before an application for state highway approach will be deemed complete. The department will not approve a grant of access where an application for approach permit cannot be approved.

(2) Right of Access Required for Public Approach. Where no right of access exists, a local jurisdiction must submit an application for a grant of access with its application to construct a public approach. The department will not approve a grant of access where an application to construct a public approach cannot be approved.

(3) Request to Verify Right of Access. Upon request, the department shall verify whether a property abutting the state highway has a right of access and identify any restrictions or limitations of the right.

(4) Removal of Farm Use Restrictions. Removing a farm crossing or farm use restriction from a reservation of access requires a grant of access from the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-2020

Grants of Access

(1) Grant of Access. The department may approve an application for a grant of access only when the provisions in sections (2) through (6) below are fully complied with.

(2) Restricted Areas.

(a) The department shall not approve an application for a grant of access for a private approach:

- (A) On an interstate highway or freeway ramp;
- (B) On an expressway or expressway ramp;
- (C) Opposite a freeway or expressway ramp terminal; or
- (D) In the influence area of an interchange.

(b) The department shall not approve an application for a grant of access for a public approach on a freeway, freeway ramp, or an expressway ramp.

(c) The department shall not approve an application for a grant of access to serve a public approach aligned opposite a freeway or expressway ramp or within the influence area of an interchange unless the public approach is included in an interchange area management or access management plan approved by the ODOT chief engineer and adopted by the commission.

(3) Criteria for Grant of Access for a Private Approach. The department may approve an application for a grant of access where all of the following conditions are met:

(a) An applicant submits an application for state highway approach, as set forth in OAR 734-051-3010 through 734-051-3030, with its application for a grant of access, as set forth by this rule;

(b) The applicant meets the requirements for issuance for a construction permit, as set forth in OAR 734-051-5020;

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the approval of the grant of access, construction permit and the permit to operate;

(d) One of the following in (A) or (B) occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-4030;

(e) Alternate access to the property is not and cannot be made reasonable pursuant to sections (6) and (7) of OAR 734-051-4020;

(f) The property owner must agree to deed restrictions that ensure that future development intensity and trip generation can be safely accommodated by the state transportation system; and

(g) The technical services manager approves an application for a grant of access.

(4) Criteria for Grant of Access for a Public Approach. The department may approve an application for a grant of access for a public approach to a state highway where all of the following conditions are met:

(a) A local jurisdiction submits an application for a grant of access, as set forth in sections (6) through (8) of this rule;

(b) The grant of access is consistent with the Oregon Highway Plan and a local transportation system plan; or, in the absence of a transportation system plan, a grant of access may be considered where the local jurisdiction has explored all practicable alternatives to the connection, including parallel streets and the purchase of additional right of way;

(c) One of the following occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The local jurisdiction provides sufficient evidence for the department to establish that the grant of access will benefit the state highway system as set forth in (i) or (ii) below:

(i) The proposed connection is a public facility with a functional classification of collector or higher and is identified in an adopted transportation system plan consistent with OAR 660-012-0000 through 660-012-0070; or

(ii) The technical services manager determines that the grant of access will provide a benefit to the state highway pursuant to OAR 734-051-4030.

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(d) The department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement, as set forth in OAR 734-051-1050, that details the responsibility for construction, maintenance, operation, mitigation measures and cost of the public approach; and

(B) May enter into an intergovernmental agreement that addresses transportation plan and land use amendments or modifications to ensure that trip generation and traffic operations from planned development can be safely supported on the state transportation system.

(5) Factors to Determine if Access Control is Still Needed. For the purposes of determining whether access control is still needed, per subsections (3)(e)(A) and (4)(e)(A) of this rule, at the proposed location for a grant of access, the department shall consider factors including but not limited to those in (a) through (g):

- (a) Classification of the highways and highway designations;
- (b) Spacing standards;
- (c) Highway mobility standards;
- (d) State and local transportation system plans;
- (e) Comprehensive plan and land uses in the area;
- (f) Safety and operational factors; and
- (g) Sight distance standards.

(6) Applicant for Grant of Access. The applicant for a grant of access must be the owner of the property abutting the highway right of way or the owner's designated agent.

(7) Complete Application for Grant of Access. A complete application for grant of access to a state highway consists of a completed and signed standard state form, a complete application for a state highway approach, including all required documentation, deposit toward processing fee for a grant of access pursuant to this rule, and a current preliminary title report covering the property to be served by the approach, showing any access easements appurtenant to the property; the department shall not process an application for grant of access that is incomplete.

(8) Fees and Deposit Toward Processing Fee. The applicant shall pay all costs incurred by the department in processing the application for a grant of access. An initial deposit to cover the processing fee is required for an application for a grant of access. The total or final processing fee is based on the actual documented costs incurred by the department plus a ten (10) percent charge for general administration:

(a) The department shall determine the amount of the initial deposit based on the complexity of the request and the anticipated cost of obtaining an appraisal of the grant of access;

(b) The initial deposit is applied towards the total or final processing fee; and

(c) The total or final processing fee includes the cost to secure an appraisal of the fair market value of the grant of access.

(9) Review Process. Upon acceptance of an application for grant of access and any required documentation, the department shall evaluate the application pursuant to division 51, ORS chapter 374, and any other applicable state statutes, administrative rules, and department manuals for evaluating and acting upon the application for a grant of access, and shall:

(a) Forward the application for grant of access to the state traffic engineer for processing pursuant to section (10) of this rule; or

(b) Based on the applicable rules, statutes, or department manuals, deny the application for grant of access.

(10) Review by State Traffic Engineer. When the application for grant of access is forwarded to the state traffic engineer, the state traffic engineer, with the assistance of department staff, shall:

(a) Evaluate the application for grant of access;

(b) Notify the applicant of any additional information required; and

(c) Make a recommendation to approve or deny the application for a grant of access to the technical services manager and the technical services manager shall conditionally approve or deny the application for grant of access subject to identified conditions of approval, and payment of the appraised value. The technical services manager shall provide written notification of the conditional decision to the applicant.

(11) Appraisal. If the application for grant of access is conditionally approved, the department shall:

(a) Appraise the abutting property to determine the fair market value of the grant of access;

(b) Notify the applicant of the value of the grant of access; and

(c) Provide the applicant with instructions for payment.

(12) Payment for Grant of Access. Except as provided by section (13) of this rule, upon approval of an application for a grant of access and prior to issuance of the deed of the grant of access, payment must be made to the

department in an amount equal to the appraised value of the grant of access; this payment is in addition to the processing fee.

(13) Waiver of Payment. The department may waive payment of the appraised value of the grant of access when an application for a grant of access is for a public approach and the department has determined that the public approach will cause a direct and immediate benefit to the state highway system as set forth in OAR 734-051-4030.

(14) Execution and Recording. After payment of fair market value is received by the department:

(a) The grant of access will be executed and recorded; and

(b) A copy of the grant of access will be sent to the region manager so that a construction permit may be issued in accordance with OAR 734-051-5020 for a private approach and 734-051-1050 for a public approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-2030

Indentures of Access

(1) General Provisions. Abutting property owners with a reservation of access must apply to the department to indenture or change the location, width or use restrictions of the reservation.

(2) Criteria for Approval of Indenture of Access. The department may approve an application for indenture of access to a property abutting a state or local facility where all of the following criteria are met:

(a) An applicant to indenture a reservation of access for a private approach must submit an application for state highway approach permit as set forth in OAR 734-051-3030 with its application for an indenture of access as set forth in this rule;

(b) The applicant meets the requirements for issuance of a construction permit, as set forth in OAR 734-051-5020;

(c) The applicant agrees in writing to meet any mitigation measures, conditions, and terms placed on the construction permit and the permit to operate;

(d) The property owner agrees to convey one or more existing reservations of access, including the reservation being indentured to the department and close any affected approaches; and

(e) The region manager approves the application for indenture of access.

(3) Mitigation. Approval of an indenture of a reservation of access for a public approach may require mitigation measures to ensure that the state transportation system can safely accommodate the traffic operations at the indentured location. Mitigation measures may include but are not limited to amendments to the comprehensive plan or transportation system plan, or modification to the public street system.

(4) Process. The application procedures for indenture of access are:

(a) A complete application for indenture of access to a state highway consists of a completed and signed standard state form, and the processing fee for indenture of access, except where the region manager, not a designee, waives the processing fee and documents in writing the reasons for the waiver;

(b) The department shall not process an application for indenture of access that is incomplete;

(c) Only the property owner or the owner's designated agent shall submit an application for indenture of access;

(d) Upon acceptance of an application for indenture of access, the department shall evaluate the application pursuant to division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and department manuals for evaluating and acting upon the application for an indenture of access; and

(e) The region manager shall approve or deny the application for indenture of a reservation of access and shall notify the applicant.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3010

Permit for Private Approach

(1) Applicability. A Permit to Operate or written documentation qualifying the approach as grandfathered as set forth in OAR 734-051-1070(29) is required for any private approach connecting to a state highway.

(2) Restricted Areas. The department shall not issue an approach permit to a freeway, a freeway ramp, or an expressway ramp, or an approach that would be aligned opposite a freeway or expressway ramp terminal.

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(3) Rules in Effect. An application for an approach permit shall be subject to the rules in effect on the date the application was filed. The department shall use OAR 734, division 51, and ORS 374, and may use other applicable statutes or administrative rules to evaluate and act on an application.

(4) Approach Permit Approval Criteria. The department shall approve an application for an approach based upon a determination that it meets all of the following criteria:

(a) The department determines that a complete application has been submitted pursuant to OAR 734-051-3030;

(b) The department determines that the application is consistent with any applicable facility plans adopted by the Oregon Transportation Commission, including special transportation area plans, access management plans, corridor plans, or interchange area management plans;

(c) Except where paragraphs (A) through (D) of this subsection apply, the department determines that the proposed approach meets the spacing, channelization and sight distance standards of OAR 734-051-4020, or the department approves a deviation from these standards under OAR 734-051-3050 which may include mitigation measures pursuant to OAR 734-051-3070;

(A) OAR 734-051-3020 applies to applications for change of use of a private approach.

(B) OAR 734-051-4020(5) applies to applications for properties with no alternate access.

(C) OAR 734-051-4040 applies to applications for temporary approaches.

(D) OAR 734-051-4050 applies to applications for special use approaches.

(d) The department determines that the approach does not create or contribute to a safety or highway operations concern, as identified in OAR 734-051-4020(3), or such concerns are sufficiently mitigated pursuant to OAR 734-051-3070.

(5) Cooperative Improvement Agreement. A written agreement between the applicant and the department may be required. The agreement will address transfer of ownership of the improvements to ODOT, work standards that must be followed, any maintenance responsibilities of the applicant, and other requirements that apply to the work. ODOT may withhold issuance of a Permit to Construct under 734-051-5020 or a Permit to Operate, Maintain, and Use an Approach under 734-051-5080 until the agreement is fully executed by all parties. ODOT will work with the applicant to identify the need and develop the provisions for the agreement early in the permitting process in order to avoid delays in obtaining permits.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3020

Change of Use of a Private Connection

(1) Applicability. An application is required for the purpose of permitting all connections to a property when there is a change of use of an existing private connection to a state highway, as set forth in section (2) of this rule, whether the connection is permitted, grandfathered or unpermitted. Applications shall be processed pursuant to OAR 734-051-3030 through 734-051-3040.

(2) Changes of Use Requiring an Application for State Highway Approach. Except as provided under section (5) of this rule, a change of use occurs when one or more of the criteria in subsections (a) through (e) of this section occurs:

(a) The number of peak hour trips increases by fifty (50) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the number of peak hour trips from that of the property's prior use; or

(b) The average daily trips increases by five hundred (500) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the average daily trips from that of the property's prior use; or

(c) The daily use of a connection increases by ten (10) or more vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater; or

(d) ODOT demonstrates that safety or operational concerns related to the connection are occurring as identified in OAR 734-051-4020(3); or

(e) The connection does not meet the stopping sight distance standards, as measured in feet, of ten (10) times the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180 for the highway as measured in miles per hour, or ten (10) times the 85th percentile

speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The permit holder may perform a study to determine if the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The sight distance measurement, as described in OAR 734-051-4020(2)(c)(A)-(B), and the study to determine the 85th percentile speed shall be performed according to published department procedures by or under the supervision of an engineer registered in Oregon. The measurement shall be taken under existing and proposed site conditions.

(3) Mandatory Meeting. Unless waived by the department, a meeting between ODOT staff and the applicant is required for a change of use application prior to the department deeming the application complete. It is preferable that the meeting be held prior to submittal of the change of use application.

(4) Determinations of Change of Use. The department shall determine whether a change of use meets the thresholds in section (2) of this rule by using one or more of the following methods:

(a) Field counts;

(b) Site observation;

(c) Traffic impact analysis;

(d) Field measurement;

(e) Crash history;

(f) Trip Generation, 8th Edition: An ITE Informational Report; and Trip Generation Handbook, 2nd Edition; both published by the Institute of Transportation Engineers (ITE); or

(g) Information and studies provided by the local jurisdiction or the applicant.

(5) Exempt from Application for Change of Use. Buildout of an approved site plan or multi-phased development does not require a new application for an approach road permit where the department determines that the buildout is consistent with the land use approval by the local government and the permit issued by the department for development.

(6) Approval Criteria. The department shall approve an application for a state highway approach that does not pose a safety or highway operations concern, as set forth in OAR 734-051-4020(3), or all such concerns are sufficiently mitigated pursuant to OAR 734-051-3070, and:

(a) The application meets the applicable approach road spacing, channelization and sight distance standards; or

(b) The department and the applicant reach agreement that the approach moves in the direction of conforming to approach road spacing, channelization, and sight distance standards pursuant to sections (7) through (9) of this rule; or

(c) The applicant and the department reach agreement under section (b) that the existing condition without change is sufficient to support approval of an application.

(7) Moving in the Direction of Conformity Collaborative Process. The department and applicant, through a collaborative process, shall determine whether an application moves in the direction of conforming to the spacing, channelization or sight distance standards subject to safety and operations concerns. The collaborative process shall be made available to the applicant within thirty (30) days of the date an application for state highway approach is deemed complete.

(8) Criteria for Moving in the Direction of Conformity. In determining whether an application for a private approach to a state highway moves in the direction of conformity with the spacing, channelization and sight distance standards of OAR 734-051-4020, the department shall consider all connections on the subject site, whether permitted, grandfathered or unpermitted. An application moves in the direction of conformity with OAR 734-051-4020 when changes are made to a connection that include, but are not limited to, one or more of the following:

(a) Eliminating or combining existing connections to the highway resulting in a net reduction in the number of connections; or

(b) Improving the distance between connections; or

(c) Improving sight distance; or

(d) Widening an existing connection to accommodate truck turning radius requirements; or

(e) Widening an existing connection to accommodate additional exit lanes; or

(f) Narrowing an existing connection to provide the appropriate number of entry and exit lanes as required for the property; or

(g) Developing a throat on a connection to allow for more efficient movement of motorists from the highway.

(9) Agreement. Where the department and applicant agree that a change of use application moves in the direction of conforming to spacing,

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channelization, and sight distance standards, the department shall approve the application without requiring separate deviations from those standards. The department, upon completion of the terms of agreement, shall issue a Permit to Operate for all approaches that are to remain operational as identified in the agreement. An agreement to remove, modify, or mitigate a connection pursuant to the agreement between the department and the applicant is not an appealable decision.

(10) Where Agreement is Not Reached.

(a) If, after participating in a collaborative process pursuant to section (7) of this rule, the applicant and the department cannot agree that an application is moving in the direction of conformity pursuant to sections (8) and (9) of this rule, the Region Manager shall document the issues of agreement and non-agreement with the applicant through a written statement of non-agreement. The applicant may then request further collaboration on the issues of non-agreement under OAR 734-051-3090, sections (1) through (3), and/or a review by the Dispute Review Board under 734-051-3100.

(b) Where agreement cannot be reached under the processes of subsection (a) of this section, the department may require additional information to complete the application and make a decision pursuant to the standards of OAR 734-051-4020 and issue a final decision to approve, deny, or approve with mitigation, consistent with the procedures in OAR 734-051-3030 and 3040. The department's decision to deny or approve with mitigation applications under the standards of OAR 734-051-4020 are subject to post-decision review under OAR 734-051-3080.

(11) Unpermitted Connections Not Subject to Moving in the Direction of Conformity Criteria. Notwithstanding sections (6) through (8) above, the "moving in the direction of" criteria as set forth in section (8) of this rule shall not be applied to the unpermitted connections in subsections (a) through (f), below. For these unpermitted connections, the department shall apply the standards of OAR 734-051-4020 to approve, deny, or approve with mitigation the application, consistent with the procedures in OAR 734-051-3040.

(a) A highway segment with access control where no right of access to the property exists at the location of the existing connection, and a concurrent application for a grant of access or indenture of access is not approved; or

(b) Any undeveloped property without an approved site plan or land use approval allowing for development of the property; or

(c) A connection that the department proves was constructed after April 1, 2000 without the department's permission or knowledge; or

(d) A property abutting a statewide classification highway with a posted speed of 50 MPH or greater; or

(e) Any highway designated as an expressway; or

(f) A property within the boundaries of an adopted access management plan, corridor plan, or interchange area management plan area, where an existing connection to the property is inconsistent with the plan, and the planned component for the future access to the site has been constructed or is funded to be constructed within four years at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 7-2012(Temp), f. & cert. ef. 5-3-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3030

Application Requirements for State Highway Private Approach

(1) Purpose. This rule sets forth the requirements for an application for state highway approach.

(2) Pre-Application Meetings.

(a) The department or applicant may request a pre-application meeting for any approach permit application.

(b) The purpose of a pre-application meeting is to review general application requirements and processing timelines, technical application requirements, and any issues specific to the proposal, including understanding the economic needs and objectives that are pertinent to the subject property.

(c) Applicant requests for pre-application meetings shall be made on forms provided by the department and shall be accompanied by a preliminary site plan, description of existing and proposed land use(s), including estimated vehicle trips, and any additional information or questions the applicant chooses to provide.

(d) The department encourages applicants to provide complete and accurate information regarding potential changes in land use and development with requests for pre-application meetings in order to avoid unnecessary delays in processing any future application.

(3) Application. An application for a state highway approach permit must include the following information in subsections (a) through (j) below:

(a) Application form for a state highway approach;

(b) A site plan illustrating the existing and proposed location of all approaches, and any other buildings, facilities, and natural geographic features that impact vehicle circulation on the property, circulation to and from the highway, or sight distance;

(c) Property owner's signature or evidence of the property owner's consent to apply for a permit where the applicant is not the owner of the subject property;

(d) Information required by the department to evaluate sight distance concerns, including but not limited to measurements, diagrams, calculations, or other information that may require preparation by a professional engineer;

(e) Information identified by the department that is required to demonstrate compliance with the approval criteria of OAR 734-051-3010 or 734-051-3020, as applicable;

(f) Identification and request for approval of all deviations from spacing, channelization and sight distance standards, as applicable;

(g) Information required by the department to evaluate a deviation pursuant to OAR 734-051-3050;

(h) A Traffic Impact Analysis (TIA) where the department determines that a TIA is required to evaluate the approach permit application pursuant to OAR 734-051-3030(4);

(i) A Land Use Compatibility Statement provided by the department, completed and signed by the local jurisdiction that certifies that all necessary local land use planning approvals have been obtained or are under review and demonstrates that the proposed use is consistent with the acknowledged comprehensive plan, and transportation system plan and local development code. In lieu of the Land Use Compatibility Statement, the department may accept the final land use decision;

(j) Tax lot map(s) with names and addresses of persons who own the properties adjacent to the subject property.

(4) When a Traffic Impact Analysis is Required.

(a) A traffic impact analysis is required for a request for a deviation from the spacing, channelization or sight distance standards as set forth in OAR 734-051-4020, unless waived by the department.

(b) Except where the criteria in subsections (A) and (B) of this section, below, are met for the highway segment where an approach permit is sought, the department may require a person applying for an approach permit to submit a traffic impact analysis in conjunction with the application for an approach permit.

(A) The average daily volume of trips at the property is determined to be four hundred (400) or fewer trips; or

(B) The average daily volume of trips at the property is determined to be more than four hundred (400) but fewer than one thousand one (1001) trips and:

(i) The highway is a two-lane highway with average annual daily trip volume of five thousand (5,000) or fewer motor vehicles;

(ii) The highway is a three-lane highway with average annual daily trip volume of fifteen thousand (15,000) or fewer motor vehicles;

(iii) The highway is a four-lane highway with average annual daily trip volume of ten thousand (10,000) or fewer motor vehicles; or

(iv) The highway is a five-lane highway with average annual daily trip volume of twenty-five thousand (25,000) or fewer motor vehicles.

(5) Traffic Impact Analysis Submittal Requirements. Traffic Impact Analyses (TIA), when required, shall be subject to the requirements of subsection (a) through (e). To the extent possible the department shall coordinate the analysis needs associated with the approach application with any local jurisdiction TIA requirements.

(a) A Professional Engineer (PE) employed by the department shall determine the scope of the TIA, and shall determine the sufficiency of the TIA for the purpose of evaluating the application.

(b) The TIA shall assess highway peak hour and average daily trips for the type of land use action proposed, for the year of the analysis, the year of each phase opening, and future years beyond project completion or buildout, but not greater than the year of the planning horizon for transportation system plans, or fifteen (15) years, whichever is greater.

(c) A Professional Engineer (PE) must prepare the study in accordance with methods and input parameters approved by the department.

(d) The scope and detail of the study must be sufficient to allow the department to evaluate the impact of the proposal and the need for roadway capacity, operational, and safety improvements resulting from the proposed approach.

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(e) The study must identify the data used and the application of data in the analysis.

(6) Waiver of Application Requirements. The department may waive requirements for information and documentation required under this rule depending on the nature of the application and the sufficiency of other information available to the department for its evaluation of an application.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3040

Private Approach Permit Application Review, Approvals and Timelines

(1) Complete Application Required. The department shall not process an application for state highway approach that is incomplete or contains insufficient information for the department to find that it meets the submital requirements of OAR 734-051-3030.

(2) Notice of Completeness Determination. Upon receiving an application for state highway approach, the department shall determine and provide written notification about whether the application is complete within thirty (30) days of its receipt of the application. Where the department determines that an application for state highway approach is not complete, (a) through (e) apply, as follows:

(a) The 120-day timeline under OAR 734-051-3040(4) does not begin until the application is deemed complete as defined in OAR 734-051-1070(18);

(b) The department shall notify the applicant in writing when an application is incomplete within the timeframes required by this rule;

(c) The department notice shall provide specific information on what is needed to make the application complete;

(d) The department notice shall indicate that the application must be made complete within sixty (60) days of the date of the department notice, at which time the application expires unless the department and applicant agree to an extension; and

(e) Where an application is deemed incomplete because no right of access exists at the proposed approach location:

(A) The department notice shall provide information on how to apply for a grant of access or an indenture of access, as applicable; and

(B) The application may not be deemed complete until the grant/indenture of access process is completed.

(3) On-Site Reviews. The department in reviewing an application for completeness may conduct an on-site review to determine the need for supplemental documentation in accordance with (a) through (c) as follows:

(a) The on-site review area includes both sides of the highway in the vicinity of the proposed approach, including the site frontage, existing connections, and public intersections;

(b) The department may notify the applicant of an on-site review to be conducted, and may invite the applicant to meet on-site to answer questions and discuss the review; and

(c) Any on-site meeting between department representatives and the applicant shall be limited to clarifying the applicant's proposal and identifying any supplemental documentation needed to meet application requirements.

(4) Decision Timeline and Final Decision Within 120-Days of Complete Application. Except as provided in section (7), the department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within one hundred twenty (120) days of the date the department deems an application for state highway approach complete. The 120-day timeline breaks down as follows:

(a) The department shall make its decision to approve, approve with mitigation, or deny an application within thirty (30) days of the date that the department determines the application to be complete, where the proposal meets the applicable spacing, channelization and sight distance standards of OAR 734-051-4020; or

(b) The department shall make its decision to approve, approve with mitigation, or deny an application within sixty (60) days of the date that the department determines the application to be complete for all other applications.

(c) The final sixty (60) days of the one hundred twenty (120) days are reserved for the contested case hearing procedures of OAR 734-051-3110, except where the timeline is extended pursuant to section (7) of this rule.

(5) General Directives Applicable to Approach Permit Decisions. The directives in (a) through (e), as follows, apply to the department's review of all applications for state highway approach:

(a) Except for highways classified as interstate highways and highways designated as expressways by the commission, and except as provided by subsection (b) of this section, the department may not use the presence of alternate access to a property abutting a highway as a basis for denying an application for state highway approach.

(b) In rural areas, the department shall consider the presence of alternate access in determining whether to approve or deny a second or subsequent application for state highway approach.

(c) Mobility standards, established by the department, are not applicable to turning movements from private approaches during the department's review of an approach permit application, except when the ratio of volume to capacity on the proposed private approach is (one-point-zero) 1.0 or greater.

(d) The department shall utilize an engineer with relevant experience to review and respond to evidence from a qualified expert that is submitted by the applicant.

(e) The city or county, and persons that own property adjacent to the proposed approach, shall be allowed to express concerns about the application prior to the issuance of the permit.

(f) Where the development includes multiple parcels, the development is evaluated in its entirety, regardless of the number of individual parcels or ownership contained within the development, and applications will not be processed for individual parcels or ownership.

(6) Notice of Pending Denial or Approval with Mitigation. When the department proposes to deny an approach or approve an approach with mitigation, it shall notify the applicant of its intent and offer the applicant a pre-decision collaborative process, pursuant to OAR 734-051-3060, to discuss the department's and the applicant's positions. Upon conclusion of this collaborative process or if the applicant declines the offer of this collaborative process, the department shall issue its decision in writing, including sufficient specificity regarding the access management standards and/or safety or operations concerns upon which the department's decision is based.

(7) Extension of Timelines. The timelines of division 51 may be extended pursuant to (a) through (c) below:

(a) Submittal of an application for a grant of access or application for an indenture of access suspends the 30 or 60-day timeline identified in subsection (4)(a) or (4)(b) of this rule.

(b) Submittal of a written request for the post-decision collaborative discussion under OAR 734-051-3090 or dispute review board review under OAR 734-051-3100 suspends the 120-day timeline in section (4) of this rule.

(c) The timelines in division 51 may be extended where the applicant and the department agree to an extension in writing before the applicable deadline, as specified in these rules. Any agreement to extend a timeline shall include a new deadline date and shall state the reason for the extension. Applications for which an extension of time has been issued will expire on the deadline date specified in the extension letter if no new extension has been agreed to and the activities for which the deadline was extended have not been completed.

(8) Pending Land Use Approvals. If a land use action is pending, including an appeal of a final land use decision or a limited land use decision, for a property for which an application has been submitted, the application may be processed and:

(a) Approval will be conditioned on the department receiving notice of approval of the land use action shown on the application; and

(b) The department may issue a construction permit while the local land use action is pending. A deposit may be required, to be determined in the manner used for a temporary approach in OAR 734-051-4040 to ensure that the approach will be removed if the land use is not approved; and

(c) The department shall not issue a permit to operate until the applicant provides the department with written proof of final land use decision.

(9) Notice of Decision and Findings. The department shall document with written findings the decision to approve, approve with mitigation or deny an approach, and shall provide written notice of its final decision to the applicant as follows:

(a) The notice shall describe the applicant's appeal rights, as set forth in OAR 734-051-3080 through 734-051-3110; and

(b) Written findings shall be provided to the applicant upon request.

(10) Form of the Record. The record shall include the following, as applicable:

(a) Completed application pursuant to OAR 734-051-3030(3);

(b) Documents or other information received or considered;

(c) Written stipulations;

(d) Meeting notes; and

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(e) Findings and final decision.

(11) Appeals. An appeal of a department decision to approve or deny an application for an approach permit can be made pursuant to OAR 734-051-3080 through 734-051-3110.

(12) Expired Applications. Except as provided by OAR 734-051-3040(7), an application for an approach shall expire after one hundred twenty (120) days of inactivity on the part of the applicant if the department sends a reminder letter to notify the applicant that ninety (90) days have passed with no activity, and advising that the application will expire in thirty (30) days if the application continues to be inactive. After an application for state highway approach has expired, a new application is required.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3050

Deviations from Approach Spacing, Sight Distance, and Channelization Standards for a Private Approach

(1) Purpose. The purpose of this rule is to establish criteria for the region access management engineer to approve; approve with mitigation; or deny requests for deviations from the standards set forth in OAR 734-051-4020.

(2) Requests for a Deviation. The applicant may request one or more deviations for an approach that does not meet spacing, sight distance, or channelization standards set forth in OAR 734-051-4020(2). Applications that request deviations:

(a) Must identify all deviations needed and any dependency or relationship that they have with one another; and

(b) Must include a traffic impact analysis prepared by a professional engineer as set forth in OAR 734-051-3030(4) and 734-051-3030(5), unless waived by the department.

(3) Mitigation. The department may require mitigation measures as set forth in OAR 734-051-3070 as a condition of approval of a deviation under this rule.

(4) Request for a Deviation Not Required. A request for a deviation from approach spacing, sight distance and channelization standards is not required if:

(a) The application is for property with no means of vehicular access other than the proposed approach, and the department and the applicant agree on a location for the approach and mitigation, if any, of the approach that optimizes safety, highway operations, and site design; or

(b) The permit action is triggered by a change of use and the department and the applicant agree that the proposed approach moves in the direction of conformance with the standards as set forth in OAR 734-051-3020.

(5) Approval of Requests for Deviations from Approach Spacing Standards. The region access management engineer may approve a request for a deviation from access spacing standards set forth in OAR 734-051-4020(8) and 734-051-4020(9) upon determining that the approach adequately addresses the safety and highway operations concerns set forth in section OAR 734-051-4020(3) and one or more of the conditions in (a) through (h) apply:

(a) The applicant agrees to provide a joint approach that serves two or more properties and results in a net reduction of connections to the highway;

(b) The applicant agrees to remove or combine connection(s) to the highway resulting in a net reduction of connections;

(c) Adherence to approach spacing standards will cause the approach to conflict with a significant natural or historic feature including but not limited to trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery;

(d) The highway segment functions as a local interest road as defined in the Oregon Highway Plan;

(e) On a couplet with directional traffic separated by a city block or more, the request is for an approach at mid-block with no other existing approaches in the block or the proposal consolidates existing vehicle accesses at mid-block;

(f) Based on the region access management engineer's determination that one or more of the safety and operations factors in OAR 734-051-4020(3) is significantly improved as a result of the approach;

(g) The region access management engineer and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design; and/or

(h) The applicant demonstrates that existing development patterns or land holdings make joint use approaches impractical.

(6) Approval of Requests for Deviations from Approach Spacing Standards in Interchange Areas.

(a) The region access management engineer shall use traffic volumes based on a 20-year planning horizon in evaluating applications for deviations from the approach spacing standards for approaches proposed within an interchange management area. The 20-year year planning horizon will be measured from the date of application.

(b) The region access management engineer may approve a request for a deviation from spacing standards in an interchange area upon determining that the approach adequately addresses the safety and highway operations factors set forth in section OAR 734-051-4020(3) and one or more of the conditions in (A) through (D) apply:

(A) A condition of approval, included in the permit to operate, is removal of the approach when alternate access becomes available;

(B) The approach is consistent with an access management plan for an interchange adopted by the commission as set forth in OAR 734-051-7010;

(C) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway; and/or

(D) Connections are combined or eliminated resulting in a net reduction of connections to the state highway.

(7) Approval of Requests for Deviations from Channelization Standards. The department may approve a deviation from channelization standards, pursuant to subsections (a) through (b) below:

(a) The region access management engineer may approve a deviation to the channelization standards set forth in OAR 734-051-4020(2) upon determining that the deviation adequately addresses highway safety and operations concerns set forth in section OAR 734-051-4020(3) and the conditions in (A) or (B) apply:

(A) The region access management engineer determines that channelization is not necessary to approve the application;

(B) The applicant agrees to restrict turning movements that cause the need for channelization in a manner satisfactory to the region access management engineer.

(b) If existing development patterns, land holdings, highway configuration or other factors make it impractical to meet channelization standards, the region access management engineer may require turning movements to be restricted at the approach.

(c) The department may require submittal of channelization design drawings prepared and sealed by an engineer licensed to practice in the state of Oregon for approval of a deviation for channelization.

(8) Approval of Requests for Deviations from Sight Distance Standards. The department may approve a deviation from sight distance standards, pursuant to subsections (a) or (b) below:

(a) The region access management engineer may approve a request for a deviation from sight distance standards set forth in OAR 734-051-4020(2) based on consideration of relevant factors, including but not limited to:

(A) Highway design speed, posted speed, and eighty-fifth (85th) percentile speed;

(B) Probable line of sight for the proposed approach;

(C) Anticipated traffic volumes at the proposed approach;

(D) Guidelines for intersection sight distance and stopping sight distance in the 2004 AASHTO Policy on Geometric Design of Highways and Streets; and

(E) Potential mitigation that would improve sight distance.

(b) Where a speed study prepared by the applicant and accepted by the department determines that the eighty-fifth (85th) percentile speed is lower than the current posted speed, the department may approve a deviation from the sight distance standard based upon the lower speed determination.

(9) Denial of Requests for Deviations. The region access management engineer shall not approve a request for a deviation from approach spacing, channelization or sight distance standards when any of the conditions in (a) through (d) apply:

(a) The requirements for approval under sections (5) through (8) of this rule, as applicable, cannot be met; or

(b) The standards can be met even though adherence to the standards results in higher site development costs; or

(c) The deviation creates a significant safety or traffic operations problem that cannot be mitigated by the applicant; or

(d) The request for a deviation results from a self-created hardship including but not limited to:

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(A) Conditions created by the proposed site plan, building footprint or location, on-site parking, or circulation; or

(B) Conditions created by lease agreements or other voluntary legal obligations.

(10) Region Manager Approval of Deviations. The region manager, not a designee, may approve a request for a deviation from approach spacing, channelization or sight distance standards when the region access management engineer is prohibited from doing so under section (9) and:

(a) A determination is made by an engineer registered in the state of Oregon and assigned by the region manager to analyze the request for a deviation determines that the approach adequately addresses the safety and highway operations concerns, or those concerns can be adequately mitigated; and

(b) The region manager, after consulting with the highway division administrator, identifies and documents conditions or circumstances unique to the site or the area that support the development.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3060

Pre-Decision Collaborative Discussion

(1) Offer of Pre-Decision Collaborative Discussion. When the department intends to deny an application or approve an application with mitigation, it shall notify the applicant of its intent and offer to meet with the applicant in a pre-decision collaborative process, as described in sections (2) through (6), below.

(2) Notice. The department notice in section (1) shall describe the basis of the preliminary decision, extend an offer to meet with the applicant to provide further explanation or clarification of the department's preliminary decision, and provide the applicant an opportunity to propose modifications.

(3) Goals of Pre-Decision Collaborative Discussion. The goals of the pre-decision collaborative process are to ensure that all relevant information has been fully considered, provide opportunity to resolve differences to the extent possible, and facilitate timely issuance of a final decision.

(4) Timeline. The department's notice of preliminary decision and offer of a collaborative process must occur within either the 30-day or 60-day application decision timeline under OAR 734-051-3040(4), whichever is applicable. The department and applicant may agree to extend the timelines for the department's final decision as part of the collaborative process.

(5) Written Decision. Agreements reached using a pre-decision collaborative discussion shall be incorporated into the department's permit decision.

(6) Applicant May Decline Offer. If the applicant declines the offer of a collaborative process, or a collaborative agreement cannot be reached, the department shall issue its final decision to deny or approve with mitigation in writing with sufficient specificity regarding the access management standards and/or the safety or operations concerns upon which the department's decision is based to allow the applicant to respond.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3070

Mitigation Measures

(1) Mitigation Authorized. The department may require mitigation measures to address adverse impacts associated with a proposed approach on the state highway or the subject property that is not prohibited by statute or division 51 rules.

(2) Cost of Mitigation. Unless otherwise set forth in division 51 rules, the cost of mitigation measures is the responsibility of the applicant, permittee, or property owner as set forth in OAR 734-051-5050.

(3) Non-Traversable Medians. The department may not impose non-traversable medians as a mitigation measure for approach permit applications unless the department first establishes that no other mitigation measures are effective or available under the circumstances.

(4) Mitigation Measures. Mitigation measures may include one or more of the following in (a) through (n) below:

(a) Modifications to an existing connection;

(b) Modifications of on-site parking or storage of queued vehicles;

(c) Installation of left turn or right turn channelization or deceleration lanes;

(d) Modifications to left turn or right turn channelization or deceleration lanes;

(e) Modifications to the roadway to maintain or improve intersection sight distance;

(f) Modification or installation of traffic signals or other traffic control devices, subject to subsection OAR 734-051-3070(7);

(g) Modification of the highway;

(h) Modification or installation of curbing;

(i) Consolidation of existing approaches or provisions for joint use approaches;

(j) Restriction of turn movements for circumstances such as:

(A) The proximity of existing connections or offset of opposing connections;

(B) Approaches within an influence area of an interchange;

(C) Approaches along an expressway;

(D) The proximity of railroad grade crossings;

(E) Approaches with a crash history involving turning movements;

(F) Approaches within the functional area of an intersection.

(k) Installations of sidewalks, bicycle lanes, or transit turnouts;

(l) Development of, or improvements to, reasonable alternate access, subject to OAR 734-051-4020(6) and 734-051-4020(7);

(m) Modifications of local streets or roads along the frontage of the site; and

(n) Installation of non-traversable medians where no other mitigation measure is effective or available under the circumstances.

(5) Relationship of Mitigation to Impacts. Mitigation measures are directly related to the impacts of the particular approach on the highway and the scale of the mitigation measures will be directly proportional to those impacts, as follows:

(a) Mitigation measures located entirely within the property controlled by the applicant and/or within existing state right of way shall be preferred over all other means of mitigation;

(b) Where mitigation requires the use of property other than that which is controlled by the applicant and/or ODOT, the department will make an effort to participate in negotiations between the applicant and other affected property owners, or assist the applicant to take necessary actions. However, ODOT will not exercise its power of eminent domain to acquire property necessarily for improvements to mitigate the adverse impacts associated with a private approach that is not also part of project delivery; and

(c) When cumulative effects of existing and planned development create a situation where approval of an application would require improvements that are not directly proportional to the impacts of the proposed approach, the region manager may negotiate mitigation measures to mitigate impacts as of the day of opening and defer the remaining mitigation to a future ODOT project which may require that the applicant convey any necessary right of way to ODOT prior to development of the subject approach.

(6) Access Mitigation and Access Management Proposals. An applicant may propose access mitigation or an access management plan to be implemented by the applicant or the local jurisdiction. The department will work with the local jurisdiction and the applicant to establish mitigation measures and alternative solutions including:

(a) Changes to on-site circulation;

(b) On-site improvements; and

(c) Modifications to the local street network.

(7) Traffic Controls as Mitigation. Where mitigation measures include traffic controls:

(a) The applicant bears the cost of the controls and construction of required traffic controls within a timeframe identified by the department or must reimburse the department for the cost of designing, constructing, or installing traffic controls; and

(b) An applicant that is a lessee must provide evidence of compliance with required traffic controls and must identify the party responsible for construction or installation of traffic controls during and after the effective period of the lease.

(8) Traffic Signal Prioritization. Traffic signals are approved in the order of priority, (a) through (c) below:

(a) Traffic signals for public approaches.

(b) Private approaches identified in a transportation system plan to become public.

(c) Private approaches.

(9) Traffic Signal Requirements. Traffic signals are approved with the following requirements:

(a) A signalized private approach must meet spacing standards for signalization relative to all planned future signalized public road intersections; and

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(b) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(10) Ownership of Improvements. All highway improvements within the right of way resulting from mitigation constructed by the permittee, subject to inspection and acceptance by the department, become the property of the department. An agreement between the department and permittee may be required with mitigation. Such agreement may include, but shall not be limited to, identifying work that is allowed to occur within the right of way, specifying the responsibilities of each party, including any maintenance responsibility, and documenting the transfer of ownership from the applicant to the department for roadway improvements.

(11) Appealable Decision. Approval of an application with mitigation measures is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3080

Post-Decision Review Processes

(1) Types of Post-Decision Review Processes. Three types of post-decision review processes are available to an applicant under division 51:

- (a) Post-decision collaborative discussion (OAR 734-051-3090);
- (b) Dispute review board (OAR 734-051-3100); and
- (c) Contested case hearing (OAR 734-051-3110).

(2) Sequence of Reviews.

(a) Except as noted in subsection (b) of this section, an applicant may request any or all of the types of reviews listed in section (1) of this rule, provided the reviews must be conducted in sequence (a) through (c).

(b) An applicant seeking further review of a determination of whether an application is moving in the direction of conformity pursuant to OAR 734-051-3020(10)(a) may request a collaborative discussion or review by the dispute review board, but may not request a contested case hearing. The option of a collaborative discussion is eliminated if the applicant chooses a review by the dispute review board prior to a collaborative discussion.

(3) Notice of Opportunity for Post Decision Reviews. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), the department shall notify the applicant when processing of the application has reached an opportunity for any of the types of post-decision review and shall provide instructions about how to request a review.

(4) Request for Post-Decision Review. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), the applicant must submit a written request to the region manager within twenty-one (21) days of the mailing date of notice of an opportunity for post-decision review, identifying which type of post-decision review the applicant is choosing and the documentation to be presented to the department.

(5) Subject of Post-Decision Reviews. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), all post-decision review processes shall consider the final decision reached by the department in the processing of the application.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3090

Post-Decision Collaborative Discussion

(1) Purpose. An applicant or permit holder may request a collaborative discussion pursuant to this rule. The post-decision collaborative discussion process is an optional dispute resolution process that falls outside the 120-day timeline in OAR 734-051-3040(4).

(2) Conduct of the Post-Decision Collaborative Discussion. The post-decision collaborative discussion with the department shall be conducted as follows:

(a) The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502;

(b) The applicant must request the collaborative discussion in writing before the discussion may proceed;

(c) During the post-decision collaborative process, the applicant or permittee and the department may present new or additional information in writing or in person for the collaborative discussion; and

(d) The collaborative discussion shall be conducted not more than forty-five (45) days from the date of the agreement to collaborate, unless the department and applicant or permittee agree to an extension.

(3) Settlement Offer. When the collaborative discussion process has concluded, the director may accept, modify or reverse the department's

original decision in making a settlement offer. The director shall notify the applicant or permit holder in writing of the department's settlement offer.

(4) When the Applicant Rejects Settlement Offer. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), when an applicant rejects the director's settlement offer, the department will notify the applicant of their right to request review of the final department decision by dispute review board under OAR 734-051-3100 or contested case hearing under OAR 734-051-3110.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3100

Access Management Dispute Review Board

(1) Dispute Review Board. In addition to requesting a contested case hearing under OAR 734-051-3110 or a post-decision collaborative discussion with the department under OAR 734-051-3090, an applicant or permittee may request review of a department decision or department determination pursuant to 734-051-3020(10)(a) through an access management dispute review board process. The dispute review board process is an optional dispute resolution process that falls outside the 120-day timeline in OAR 734-051-3040(4).

(2) Dispute Review Board Members. The department shall appoint an access management dispute review board consisting of any or all of the following in subsections (a) through (d) below:

(a) The director, or a designee of the director who is familiar with the location in which the disputed approach is located;

(b) A representative of the local jurisdiction in which the disputed approach is located;

(c) A traffic engineer who practices engineering in Oregon; and

(d) A representative from the economic or business sector.

(3) Procedure. The dispute review board review shall be conducted as follows:

(a) The access management dispute review board shall consider information presented by the parties;

(b) The applicant or permittee and the department may present new information to the dispute review board, if the new information has been shared with the other party in advance of the scheduled meeting and the party receiving the new information has a reasonable amount of time to prepare a response; and

(c) The dispute review board shall notify the applicant or permittee and the director of its findings regarding the department's original decision or its recommendations pursuant to OAR 734-051-3020(10)(a).

(d) The dispute review board review shall be conducted not more than forty-five (45) days from the date of applicant's request, unless the department and applicant or permittee agree to an extension.

(4) Settlement Offer. The director shall review the access management dispute review board's findings and recommendation and may accept, modify or reverse the department's original decision or determinations pursuant to OAR 734-051-3020(10)(a) in making a settlement offer. The director shall notify the applicant or permit holder in writing of the department's settlement offer.

(5) Rejection of Settlement Offer. Where an applicant rejects a settlement offer with respect to a determination pursuant to OAR 734-051-3020(10)(a), the department will issue a final decision pursuant to 734-51-3020(10)(b). In all other cases, if the applicant rejects the settlement offer, the applicant or permit holder is entitled to file a request for a contested case hearing of the original decision within 21 days of the issuance of the settlement offer.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3110

Contested Case Hearing Process

(1) Right to a Contested Case Hearing. Pursuant to ORS 374.313, a person holding an interest in real property, which is or would be served by an approach, may appeal a decision of the department by filing a request for a contested case hearing. Department decisions that result from conditions contained in a contract, condemnation judgment, recorded deed or permit cannot be appealed through the contested case hearing process.

(2) Procedure. The contested case hearing procedure is subject to the following requirements in subsections (a) through (f) below:

(a) The request for a hearing and the hearing are governed by OAR 137-003-0501 through 137-003-0700;

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(b) After receiving a request for a contested case hearing, the department shall notify the office of administrative hearings of the request for the hearing;

(c) The hearings process falls within the 120-day timeline in OAR 734-051-3040(4) unless the department and the applicant mutually agree to a time extension;

(d) The department and the applicant may present additional information in writing or in person at the contested case hearing; and

(e) An administrative law judge will review the department's decision, conduct a hearing, and may approve, reverse, or modify the decision. The administrative law judge:

(A) Shall issue a proposed order as set forth in OAR 137-003-0645;

(B) May require conditions or limitations to be incorporated into the construction permit or the permit to operate; and

(C) The filing of exceptions stays the 120-day timeline for ODOT's final decision.

(f) The director shall issue a final order or may adopt as final the proposed order issued by the administrative law judge.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4010

Access Management Standards for Approaches — General Provisions

(1) Applicability. Access management standards for approaches to state highways:

(a) Are based on the classification of the highway and highway designation, type of area, and posted speed;

(b) Apply to properties abutting state highways and planning processes involving state highways, and other projects as determined by the region manager;

(c) Do not apply to legal approaches in existence prior to January 1, 2012, except for those private approaches subject to the change of use provisions, pursuant to OAR 734-051-3020;

(d) Are intended to facilitate infill development and redevelopment, as applicable, with the goal of meeting or improving compliance with the access management spacing standards; and

(e) Are further intended to facilitate highway and interchange construction or modernization projects, or other roadway or interchange projects as determined by the region manager, with the goal of meeting or improving compliance with the access management spacing standards.

(2) Standards for Private Approaches. The access management standards are based on approach spacing distance, sight distance, the presence of channelization, and safety and operations considerations. OAR 734-051-4020 contains the access management standards applicable to private approaches.

(3) Access Management Standards for Infill and Redevelopment. The region access management engineer may apply the 'urban' access management spacing standards of OAR 734-051-4020 to infill or redevelopment projects in a rural area on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below 45 miles per hour.

(4) Special Transportation Area (STA) Designations. Where the Oregon Transportation Commission has designated a Special Transportation Area (STA) in the Oregon Highway Plan, the spacing standards for such highway designation will be applied to the application.

(5) Deviations. Deviations from the access management standards must meet the criteria in OAR 734-051-3050.

(6) Traffic Signals. Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4020

Standards and Criteria for Approval of Private Approaches

(1) Applicability. This rule describes standards and criteria that the department applies to the review of an Application for State Highway Approach that has been deemed complete as set forth in OAR 734-051-3030. Applications submitted for change of use of an approach may be reviewed under the standards and criteria set forth in OAR 734-051-3020 in lieu of this rule.

(2) General Approval Criteria. Except for applications where the department identifies safety or operations concerns set forth in section (3), and except for applications that are subject to alternate access considera-

tions as set forth in sections (5) through (7), the Region Manager shall approve an Application for State Highway Approach that meets the general approval criteria (a)-(c) in this section. Additional criteria set forth in section (9) apply to interchange areas.

(a) Approach Spacing Standards. Section (8) of this rule sets forth the approach spacing standards, except that the spacing standards applicable to interchanges and interchange areas are set forth in section (9).

(b) Channelization Standards. An application meets the channelization standards of this rule if none of the conditions in (A) through (C), below, exist; where a condition in (A) through (C) exists, an application may meet the channelization standards if the existing or proposed lane configuration on the highway conforms to the design requirements of the ODOT Highway Design Manual in effect at the time the application is filed.

(A) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a two-lane highway with annual average daily traffic of five thousand (5,000) or more motor vehicles; or

(B) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a four-lane highway with annual average daily traffic of ten thousand (10,000) or more motor vehicles; or

(C) Average daily trips for the existing or proposed development multiplied by the annual average daily traffic on the highway is equal to or greater than the products listed in the Table 1. [Table not included. See ED. NOTE.]

(c) Sight Distance Standards. Table 2 sets forth the sight distance standards for approaches. An Application for State Highway Approach meets the sight distance standard of this rule if the intersection sight distance at the intersection of the proposed approach and highway is equal to or greater than shown in Table 2. Intersection sight distance shall never be less than stopping sight distance, as calculated in accordance with the 2004 AASHTO Policy on Geometric Design of Highways and Streets. Sight distance must be unobstructed within the sight triangle based on the following positions of measurement:

(A) Driver's eye height equal to 3.5 feet above the road surface of the proposed approach at a location 15 feet from the edge of the travel lane; and

(B) Object height equal to 3.5 feet above the road surface at the near edge of the travel lane to the left and at the far edge of the travel lane to the right of the approach. [Table not included. See ED. NOTE.]

(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway operations concerns that the department may consider are limited to (a) through (f), below:

(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or

(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or

(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or

(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or

(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, calculated in accordance with the 2004 AASHTO Policy on Geometric Design of Highways and Streets; or

(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:

(A) Signalized intersections; or

(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or

(C) On-ramps or off-ramps.

(4) Applications that Do Not Meet Approval Standards and Criteria — Deviations. The department may approve an application that does not meet the approval standards and criteria of this rule for approach spacing, sight

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distance, and/or channelization if a deviation from the standards is approved as set forth in OAR 734-051-3050.

(5) Applications for Properties with No Alternate Access. For an application for an approach to property with a right of access and no alternate access, the department may waive the standards and criteria of this rule for access spacing, sight distance and channelization if the department and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design. Approval of an application under this section does not require approval of a deviation. If agreement cannot be reached the department shall apply OAR 734-051-4020(2)-(4) to the application to approve, deny, or approve with mitigation the application, consistent with the procedures in 734-051-3040. In applying 734-051-4020(2)-(4), the department may include any matters of agreement or other results from discussion with the applicant pursuant to this section. The department's decision to deny or approve with mitigation applications under 734-051-4020(2)-(4) is subject to post-decision review under 734-051-3080.

(6) Applications Where the Department Shall Consider Alternate Access.

The region manager shall consider alternate access to a property only for an application for an approach to a highway designated as an expressway as described in subsection (a) of this section, or for a second or subsequent approach to a property in a rural area as described in subsection (b) of this section.

(a) Expressways. The region manager may approve an application to an expressway for a property that has alternate access when the criteria in (A) through (C) below are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach provides an immediate and long-term benefit to the state highway system as set forth in OAR 734-051-4030, in addition to mitigating any safety or operations concerns; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(b) A Second or Subsequent Approach in a Rural Area. The region manager may approve an application for a second or subsequent approach to a property in a rural area, that has alternate access when the criteria in paragraphs (A) through (C) are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach will serve rural infill or redevelopment and approval of the approach will result in a net reduction of connections to the highway or the net result improves safety for any remaining approaches; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(7) Reasonable Alternate Access Criteria. In determining whether alternate access is or can be made reasonable pursuant to section (6) of this rule, the department shall consider all of the following provisions in subsections (a) through (e) below:

(a) Authorized Uses. Alternate access to the property is adequate to allow the authorized uses for the property identified in the acknowledged local jurisdiction comprehensive plan and local land use regulations, taking into account the economic development needs of the property;

(b) Type, Number, Size and Location of Alternate Access. The type, number, size and location of alternate access are adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property and taking into account the economic development needs of the property;

(c) Constraints to Alternate Access. The presence of constraints that limit the development of alternate access including:

(A) Legal restrictions;

(B) Geographic restrictions;

(C) Historical or cultural resources; and

(D) Physical considerations such as planned streets, roadway width, and weight and size restrictions;

(d) Availability of Mitigation Measures. The availability of mitigation measures set forth in OAR 734-051-3070 that the applicant could make on

the property or along the roadway frontage of the property, including situations in which the applicant or the local jurisdiction commits proportional shares toward the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network. Neither the lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is conclusive in evaluating whether a vehicle access is or could be made reasonable; and

(e) Phasing. In circumstances where a significant difference exists between the existing and the planned local road network the department may consider a phased method to establishing reasonable alternative access as follows:

(A) Where a planned public street or road network cannot be provided at the time of development, an application for an approach may be approved with conditions requiring a connection to the planned local street or road network when it becomes available;

(B) The approach permit to the state highway may be revoked and the approach removed, or the approach permit may be modified and additional mitigation required when the planned street or road network becomes available; and

(C) ODOT and the local government enter into an agreement regarding the timing, cost and responsibility for the development of the planned street or road network.

(8) Access Management Spacing Standards. Tables 3, 4, 5, 6, 7, 8, 9 and 10 set forth the access management spacing standards; Tables 7, 8, 9, and 10, including Figures 1, 2, 3 and 4, specifically set forth the spacing standards for interchanges and approaches in interchange areas. Tables 3 and 6 provide spacing standards for unclassified highways such as service roads and frontage roads. An application meets the spacing standards of this rule if the spacing of the proposed approach is equal to or greater than the distance shown in the applicable table. The spacing standards in Tables 3 through 6 are subject to the method of measurement and exceptions in subsections (a) through (c) below:

(a) The spacing standards described in Tables 3 through 6 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing private connection, proposed approach, or public approach on the same side of the highway in both directions;

(b) The following exceptions in subsections (A) through (E) apply to the spacing standards described in Tables 3 through 6:

(A) On one-way highways or highways with a non-traversable median, where turning movements to and from the highway are limited to either right in/right out or left in/left out turns only, the applicable approach spacing standards equal one-half the spacing standards in Tables 4 through 6.

(B) Tables 4 through 6 apply to highways designated as expressways regardless of average daily traffic.

(C) The spacing standards identified by special transportation area management plans, access management plans, corridor plans, interchange area management plans or interchange management areas, as adopted by the Oregon Transportation Commission, take precedence over the spacing standards described in Tables 3 through 6.

(D) For special transportation areas where no management plan was adopted, the minimum access management spacing for public road approaches is the existing city block spacing or the city block spacing as identified in the local comprehensive plan. Public road connections are preferred over private approaches and in STAs, private approaches are discouraged; however where private approaches are allowed and where land use patterns permit, the minimum access management spacing for private approaches is 175 feet or mid-block if the current city block spacing is less than 350 feet.

(E) For a signalized private approach, the signal spacing standards as established in OAR 734-020-0400 through 734-020-0500 supersede the approach spacing standards described in Tables 3 through 6; and

(c) The spacing standards in Tables 3 through 6 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new approach or change of use of an approach is required under ORS 374.312;

(B) Where infill development or infill redevelopment occurs and spacing or safety will be improved by moving in the direction of the spacing standards in Tables 3 through 6; or

(C) Where a highway or interchange project occurs and spacing or safety will be improved by moving in the direction of the applicable spacing standards in Tables 3 through 6. [Table not included. See ED. NOTE.]

(9) Spacing Criteria for Applications in an Interchange Area. In addition to the spacing standards in Tables 7 through 10, the following criteria

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in subsections (a) and (b) below apply to approval of an application for a proposed approach located in an interchange area:

(a) The approach must be consistent with adopted access management plans or interchange area management plans; and

(b) Location of proposed traffic signals within an interchange area as illustrated in Figures 1, 2, 3 and 4 must meet the criteria of OAR 734-020-0400 through 734-020-0500. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4030

Benefit to the State Highway System

(1) General Requirements. A benefit to the state highway system is a determination requiring the professional judgment of a professional engineer employed by the department and:

(a) Will be found only where the department determines that an approach will provide an immediate and long-term benefit to the state highway system;

(b) Is evaluated for a period of not less than twenty (20) years from the date of application; and

(c) For an application for a grant of access, the benefit to the highway must be greater than the benefit associated with the mitigation needed to offset the traffic operations and safety impacts of the proposed approach.

(2) Criteria for Determination of Benefit to the State Highway System. The determination of the existence of a benefit to the state highway system must meet the following criteria in subsections (a) and (b) below:

(a) The department determines that the proposal results in improved access management of the highway by controlling, combining, or eliminating existing or planned approaches; and improving:

- (A) Approach spacing standards;
- (B) Public approach spacing; or
- (C) Intersection sight distance; and

(b) The department determines that one or more of the conditions identified in paragraphs (A) through (F) below will occur without degradation of any of the conditions in paragraphs (A) through (E), as follows:

- (A) Highway mobility standards improve;
- (B) Safety improves;
- (C) Specific safety concerns in the general vicinity are eliminated because of closure of an existing approach;

(D) Operations in the general vicinity improve as a result of connectivity, traffic diversions, or other traffic engineering techniques;

(E) The applicant demonstrates that off-system connectivity improves and reduces demand to the state highway system without creating operational or safety concerns elsewhere; and:

- (i) Off-system connectivity must occur immediately; or
- (ii) Off-system connectivity must be committed for construction as evidenced by the local government's adopted capital improvement plan; and

(F) The department determines that other circumstances result in a benefit to the state highway system.

(3) Private Approach on an Urban Area Expressway. For an application for a private approach to an expressway in an urban area, the department may determine that a benefit to the state highway system exists if the requirements of subsection (a), (b) or (c) of this section are met:

(a) Where a change of use occurs, approaches to the expressway are combined or eliminated resulting in a net reduction in the number of approaches to the expressway, and the applicant demonstrates an improvement to:

- (A) Private approach spacing;
- (B) Public approach spacing; or
- (C) Intersection sight distance standards.

(b) The department determines that an improvement in safety occurs on the section of the expressway where an approach is requested and the provisions of paragraphs (A) and (B) of this subsection are met:

- (A) Only one approach to the expressway is requested, and:
 - (i) Where a new approach is requested, no approach to the site currently exists; or
 - (ii) Where a change of use occurs, only one private approach to the site currently exists; and
- (B) An improvement in safety occurs on the expressway primarily and on other state highways secondarily and includes:

- (i) A decrease in the total number of existing conflict points;
- (ii) Elimination of existing left turns;
- (iii) Elimination of an existing overlap of left turn movements;

(iv) The addition of a left turn lane where existing conditions meet the department's installation criteria; and/or

(v) Provision of adequate sight distance at the alternate approach or the subject approach where existing sight distance is deficient.

(c) The region access management engineer determines that the approach results in a benefit to the state highway system due to other circumstances.

(4) Procedure. The department determines whether a benefit to the highway system occurs, as follows:

(a) The region access management engineer will make a determination on those applications for an approach to an urban expressway; and

(b) The department's technical services manager will make a determination on those applications for a grant of access.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4040

Temporary Approaches

(1) Procedure and Criteria. The region manager may approve an application for a temporary approach where:

(a) The department determines that a complete application has been submitted pursuant to OAR 734-051-3030 and that the approach can be operated safely. The department shall consider the spacing, channelization and sight distance standards set forth in OAR 734-051-4020 when determining whether an approach can be operated safely;

(b) Conditions such as signing or flagging are identified on the construction permit and the permit to operate and are enforced during construction and operation; and

(c) A closure date is specified on the permit to operate. A temporary permit cannot exceed two years.

(2) Deposit Required. A deposit of not less than \$1,000 per temporary approach is required prior to issuance of a construction permit and a permit to operate a temporary approach to guarantee its removal by the applicant, pursuant to subsections (a) through (c) below:

(a) The appropriate district office will determine the amount of the deposit;

(b) If the department incurs no expense in the removal of the temporary approach, the entire deposit is refunded to the applicant; and

(c) If the department incurs any expenses in the removal of the approach, the applicant will be billed for the amount in excess of the amount deposited or refunded the difference if the expense is less than the amount deposited.

(3) Time extension for temporary approaches. The region manager may extend the closure date, for a temporary approach where extenuating circumstances beyond the control of the applicant or permittee exist.

(4) Right of Access for Temporary Approaches. The applicant must have a right of access to apply for a temporary approach permit. Existence of a recorded easement may not by itself establish a right of access and does not guarantee the approval of an application for a temporary approach or the location of a temporary approach.

(5) Deviations. Approval of a deviation is not required for approval of an application for a temporary approach.

(6) Appeal. The department's decision to deny or approve with mitigation applications under this section are subject to post-decision review under OAR 734-051-3080.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4050

Special Use Approaches

(1) Procedure. The region manager shall approve an application for a special use approach where the department determines that a complete application has been submitted pursuant to OAR 734-051-3030 and that the approach can be operated safely. The department shall consider the spacing, channelization and sight distance standards outlined in OAR 734-051-4020 when determining whether an approach can be operated safely.

(2) Design. The design of special use approaches shall:

(a) Be limited from general use by physical means such as a gate or other design approved by the department; and

(b) May require special design considerations such as reinforced sidewalks, curb design options, and landscaping considerations.

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(3) Mitigation. The region manager may require mitigation measures to be incorporated into a construction permit and a permit to operate a special use approach.

(4) Right of Access for Special Use Approaches. The applicant must have a right of access to apply for a special use approach permit. Existence of a recorded easement may not by itself establish a right of access and does not guarantee the approval of an application for a special use approach or the location of a special use approach.

(5) Deviations. Approval of a deviation is not required for approval of an application for a special use approach.

(6) Appeal. The department's decision to deny or approve with mitigation applications under this section are subject to post-decision review under OAR 734-051-3080.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5010

Design of Approaches

(1) Design. Approach design must conform to design standards in the Oregon Highway Design Manual and provide for the safe movement of vehicles reasonably expected to utilize the approach to and/or from the highway without undue conflict with other traffic on the highway and the site.

(2) Mitigation. Design of an approach shall incorporate mitigation measures required as conditions of approval of an approach permit or an approval of a request for a deviation from the standards.

(3) Placement of Structures in Right of Way. No person may place curbs, posts, signs, or other structures on the highway right of way without approval pursuant to a permit issued by the department and compliance of all environmental regulations.

(4) Drainage. An applicant is responsible for the cost of accommodating drainage from the property.

(5) Private Road Crossings. Private road crossings shall be grade-separated and not connect to the state highway except where the technical services manager determines that grade separation is not economically feasible. Where the technical services manager determines that grade separation is not economically feasible the applicant shall install signing, signalization, other traffic safety devices or other mitigation that the technical services manager determines necessary to safely operate the crossing.

(a) The department may construct the approach and additional facilities in accordance with the plans and specifications approved by the department; or

(b) The applicant may be required to install the approach and additional facilities, other than signalization, in accordance with plans and specifications approved by the region manager, where installation can be completed adequately and safely.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5020

Issuance of Construction Permits

(1) General Requirements. The region manager shall issue a construction permit when construction plans, if required, and all other required documents are received and approved.

(2) Procedure. Prior to issuing a construction permit the department will issue to the applicant construction specifications including all provisions, mitigation measures, conditions, and agreements that will become part of the construction permit. To receive a construction permit, the applicant must complete the following, pursuant to subsections (a) through (d) below, within sixty (60) days of the date of the department's transmittal of the construction specifications:

(a) Review and sign the construction specifications to confirm that the applicant understands and agrees to the specifications including all provisions, mitigation measures, conditions, and agreements that will become part of the construction permit; and

(b) When the department determines that standard plans are not appropriate, an applicant must submit construction plans sealed by an engineer licensed in the state of Oregon within 60 days of notice of approval of an application to obtain a construction permit. The region manager determines the acceptability of submitted construction plans. If plans are not submitted within 60 days and no request for extension is received within that time, the approval of the application will be void; and

(c) Return the signed construction specifications to the department; and

(d) Submit proof of liability insurance and bond or deposit in lieu of bond as required by OAR 734-051-5060.

(3) Non-Compliance. If the applicant does not complete the actions required in section (2) of this rule within the 60-day timeframe, then the department will not issue a construction permit and all approvals associated with approach application will be revoked. The 60-day time frame may be extended if the permittee and the department agree in writing before the deadline pursuant to OAR 734-051-5040.

(4) True and Complete Information. An applicant or permittee shall provide true and complete information, and if any required fact that is material to the assessment of the approach's impact upon traffic safety, convenience or the legal or property rights of any person (including the State of Oregon) is false, incorrect or omitted, the region manager may:

(a) Deny or revoke the construction permit; and

(b) At the applicant's or permittee's expense require the applicant or permittee to:

(A) Remove the approach and restore the area to a condition acceptable to the region manager;

(B) Provide additional safeguards to protect the safety, convenience, and rights of the traveling public and persons (including the State), if such safeguards are adequate to achieve these purposes, as a condition of the continued validity of the permit to operate; and

(C) Reconstruct or repair the approach.

(5) Signed Permit Required. No work on highway right of way may begin until an applicant obtains a valid construction permit, approved and signed by the region manager.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5030

Construction of Approaches

(1) Notice of Intent to Begin Construction. A permittee must notify the region manager at least two workdays prior to beginning construction.

(2) Construction. Construction must conform to the terms of the construction permit including any special provisions, mitigation measures, conditions, or agreements, and the applicant must notify the region manager when construction is complete.

(3) Utilities, Erosion Control, Signs, Work Area Safety. The applicant or permittee is responsible for complying with the following requirements of subsections (a) through (d) below:

(a) The applicant shall relocate or adjust any utilities located on highway right of way when required for accommodation of the approach, and no construction may be performed until the permittee furnishes evidence to the department that satisfactory arrangements have been made with the owner of the affected utility facility;

(b) The applicant shall provide erosion control during construction of the approach;

(c) The applicant shall comply with applicable sign requirements. Where warning signs are required by the construction permit, other regulations, or the region manager, the department furnishes, places, and maintains the signs at the permittee's expense; and unauthorized signs are not allowed on any portion of the right of way; and

(d) The applicant shall comply with work area safety requirements. The work area during any construction or maintenance performed under a construction permit or a permit to operate shall be protected in accordance with the 2003 Manual on Uniform Traffic Control Devices (MUTCD), the Oregon Supplement to MUTCD, and Oregon Temporary Traffic Control Handbook adopted under OAR 734-020-0005.

(4) Inspection. Upon inspection of the approach the department shall notify the permittee if construction deficiencies exist, and:

(a) The permittee must correct all deficiencies within sixty (60) days of notification that deficiencies exist and notify the region manager; and

(b) The region manager shall re-inspect the approach.

(5) Compliance. If a permittee fails to comply with the terms and conditions of the construction permit the department may, at the permittee's expense:

(a) Reconstruct or repair the approach; or

(b) Cancel the construction permit and remove the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

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734-051-5040

Effective Period of Construction Permits

(1) Effective Period. A construction permit is effective for the time period specified on the permit. The region manager shall extend the time period of a construction permit for good cause shown.

(2) Revocation of Permit. The region manager may revoke a construction permit where the permit holder fails to conform to the terms of the construction permit including any special provisions, mitigation measures, conditions, or agreements.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5050

Responsibility for Costs of Construction of Approaches

(1) Costs the Permittee Bears. Except as otherwise provided in the division 51 rules, the permittee is responsible for the cost of mitigation measures and the cost of construction of an approach, including the cost of materials, labor, signing, signals, structures, equipment, traffic channelization, and other permit requirements.

(2) Costs the Department May Bear. The department may be responsible for:

(a) The cost of mitigation measures and the cost of construction of an approach where the costs are a part of the terms and conditions of a right of way acquisition obligation or other departmental contractual agreement; and/or

(b) The cost of removal or relocation of a legal approach upon highway right of way during project delivery.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5060

Liability, Insurance and Bonding Requirements

(1) Liability. A permittee assumes responsibility for damage or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of an approach for which a construction permit or a permit to operate is issued and where the permittee may be legally liable.

(2) Indemnification. An applicant or permittee indemnifies and holds harmless the State of Oregon, the commission, the department, and all officers, employees or agents of the department against damages, claims, demands, actions, causes of action, costs, and expenses of whatsoever nature which may be sustained by reasons of the acts, conduct, or operation of the applicant, his agents, or employees in connection with the construction, maintenance, repair, operation, or use of an approach. Any such indemnification shall also provide that neither the contractor or subcontractor, nor any attorney engaged by the contractor or subcontractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election, assume its own defense and settlement in the event that it determines that the contractor is prohibited from defending the State of Oregon, or that the contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the contractor if the State of Oregon elects to assume its own defense.

(3) Amount of Insurance. Construction of an approach may not begin until the applicant provides the department with evidence of insurance in the following minimum amounts:

(a) \$500,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit and annual aggregate; and

(b) \$500,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence and annual aggregate.

(4) Additional Insured. Insurance policies must include as Additional Insured the State of Oregon, the commission, and the department, its officers, agents and employees, except as to claims against the permittee, for personal injury to any members of the commission or the department and its officers, agents, and employees or damage to any of its or their property.

(5) Insurance Required Prior to Construction. Construction of an approach may not begin until a copy of the insurance policy or a certificate showing evidence of insurance is filed with the department.

(6) Notice of Intent to Cancel or Not Renew Insurance. A permittee shall provide thirty (30) days written notice to the department of intent to cancel or intent not to renew insurance coverage. Failure to comply with notice provisions does not affect coverage provided to the State of Oregon, the commission, or the department, its officers, agents and employees.

(7) Damages. If the permittee or permittee's contractor damages the highway surface or highway facilities, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the department.

(8) Assurances. The permittee must furnish, in an amount specified by the region manager and for the time period necessary to install the approach, a cash deposit or a bond issued by a surety company licensed to do business in the State of Oregon to ensure the approach is installed in conformance with the requirements of this division and that any damage to the highway has been corrected to the department's satisfaction; and no construction is performed until a deposit or bond is filed with the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5070

Review Procedure for Modifying a Construction Permit

(1) Review. An applicant may request a review to modify a construction permit if:

(a) Ambiguities or conflicts exist in the construction permit;

(b) New and relevant information concerning the approach or the construction permit is available; or

(c) Requirements of local governments or state agencies are relevant to the modification of the construction permit.

(2) Procedure.

(a) The region manager shall determine if a request to review a construction permit meets the criteria in section (1) of this rule.

(b) If the region manager determines that the criteria in section (1) are met, the region manager shall review and may modify the construction permit in cooperation with affected parties and consistent with engineering best practices.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5080

Issuance of a Permit to Operate, Maintain and Use an Approach

(1) Permit to Operate. The department shall issue a permit to operate for a private approach upon approval of an application, where no construction permit is required, or upon notification by the applicant that construction is complete and the department determines that the approach conforms to the terms and conditions of the construction permit.

(2) Use of Approach. A permit to operate authorizes vehicles to enter and exit the highway at the location of the approach, except as otherwise limited through mitigation required under OAR 734-051-3070.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5090

Maintenance of Approaches

(1) Approvals. To perform maintenance on a public or private approach, the permittee or owner must obtain the department's approval and any necessary permits prior to performing maintenance on an approach on highway right of way.

(2) Maintenance.

(a) For a private approach, the permittee or owner of a grandfathered approach is responsible for the cost of maintenance of an approach from the outside edge of the highway pavement, shoulder, or curb-line to the right of way line, and shall maintain all portions of the approach on the applicant's or permittee's property as a requirement of the permit.

(b) For maintenance of a public approach, the department may require an intergovernmental agreement with the city or county to define responsibilities and obligations.

(c) Traffic signal maintenance on the state highway shall be performed by the department or as assigned by a cooperative improvement agreement or intergovernmental agreement.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

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Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5100

Effective Period of Permit to Operate, Maintain and Use an Approach

(1) General Provisions. A permit to operate, maintain and use ("permit to operate") an approach runs with the land. Except as otherwise provided, a permit to operate is effective until:

- (a) Revoked by mutual consent;
- (b) Revoked for failure to abide by the terms and conditions;
- (c) The approach is subject to a change of use as set forth in OAR 734-051-3020;
- (d) The development of safety or operational concerns as set forth in OAR 734-051-4020(3);
- (e) The approach is modified, mitigated, or removed in accordance with OAR 734-051-5120 Project Delivery; or
- (f) By other operation of law.

(2) Successors and Assignees. The permit to operate is binding on successors and assignees including successors in interest to the property being served by the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5110

Revocation of Permits and Removal of Approaches

(1) Revocation of a Permit to Operate. The department may revoke a permit to operate and may remove an approach:

- (a) If there are current or potential safety or operational conditions identified that are verified by an engineering analysis;
- (b) If a permittee fails to comply with any terms or conditions of a permit to operate; or
- (c) During project delivery for a highway improvement project as set forth in OAR 734-051-5120.

(2) Notification of Intent to Remove an Approach. The department shall provide written notification of the intent to remove an approach under section (1) of this rule as required by ORS 374.305, 374.307, and 374.320.

(3) Mitigation. The region manager may determine that an approach identified for removal as described in section (1) of this rule may remain open if permittee agrees to comply with mitigation measures and to bear the cost of the mitigation measures.

(4) Cost of Removing an Approach. An applicant, permittee, or property owner is responsible for the expense of removing an approach except as set forth in OAR 734-051-5050 and 734-051-5120.

(5) Appeals. Removal of a permitted or grandfathered approach is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5120

Project Delivery

(1) General Provisions. This rule applies to projects involving construction of new highways and interchanges, highway or interchange modernization projects, highway and interchange preservation projects, highway and interchange operations projects, or other highway and interchange projects. The department encourages the development of access management strategies and access management plans during project delivery to maintain and improve highway performance and safety by improving system efficiency and management before adding capacity. Access management plans and access management strategies developed during project delivery must improve access management conditions to the extent reasonable within the limitation, scope, and purpose of the project and consistent with design parameters and available funds.

(2) Department Exemptions. This rule does not create an obligation that the department apply documentation requirements in OAR 734-051-3010 through 734-051-3050 or the standards and criteria in 734-051-4010 through 734-051-4050, 734-051-5110, or 734-051-2010 through 734-051-2030.

(3) Access Management Strategies. The region manager shall develop access management strategies for modernization projects, projects within an influence area of an interchange where the project includes work along the crossroad, or projects on an expressway and may develop access management strategies for other highway projects.

(4) Access Management Plans. Except where the region manager documents the reasons why an access management plan is not appropriate, the

region manager shall develop an access management plan for highway modernization projects and for interchange modernization projects where the project includes work along the crossroad. Access management plans are developed under the requirements of OAR 734-051-7010.

(5) Modification, Mitigation or Removal of Approaches. The region manager may require modification, mitigation or removal of approaches, including grandfathered approaches, within the project limits:

(a) Pursuant to either:

(A) An adopted access management plan or interchange area management plan; or

(B) An approved access management strategy; and

(b) If necessary to meet the classification of highway or highway designation, mobility standards, spacing standards, sight distance, channelization or safety factors; and

(c) If a property with an approach to the highway has multiple approaches and if a property with an approach to the highway has alternate access in addition to the highway approach.

(d) In considering the closures, modification or mitigation of approaches during project delivery the region manager must find that vehicle access will remain adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.

(6) Scope of an Access Management Strategy. An access management strategy may be developed for the project limits, a specific section of the highway within the project limits, or to address specific safety or operation issues within the project limits. An access management strategy must:

(a) Describe the criteria for actions that will be taken during the project and that will occur primarily within the highway right of way, within the project limits;

(b) Be consistent with the Oregon Highway Plan;

(c) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway designation;

(d) Provide for reasonable use of the adjoining property consistent with the comprehensive plan designation and zoning of the area; and

(e) Be developed in coordination with affected local government where actions on the part of the local governments are needed to implement the access management strategy.

(7) Presumption of Compliance. All legal approaches in an area that is not subject to access control that are identified to remain open in an approved access management strategy or adopted access management plan or adopted interchange area management plan are presumed to be in compliance with division 51 rules once any measures prescribed for such compliance by the plan are completed. Subsequent changes to the approach will be measured from the date the strategy is approved or the plan is adopted. However, that status does not convey a grant of access.

(8) Conflicting Provisions. In the event of a conflict between the access management spacing standards and the access management spacing standards for approaches in an interchange area, the more restrictive provision will prevail. These spacing standards are used to develop access management plans and where appropriate:

(a) Support improvements such as road networks, channelization, medians, and access control, with an identified committed funding source, and consistent with the Oregon Highway Plan;

(b) Ensure that approaches to cross streets are consistent with spacing standards on either side of the ramp connections; and

(c) Support interchange designs that consider the need for transit and park-and-ride facilities and the effect of the interchange on pedestrian and bicycle traffic.

(9) Grandfathered Approaches. Notwithstanding other provisions of this division, the region manager, not a designee, may recognize an approach to be in compliance where there is no access control, and where construction details for a department project show the intention to preserve the approach as a part of that project, as documented by plans dated before April 1, 2000.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6010

Authority and Purpose of OAR 734-051-6010 through 734-051-6060

(1) Pursuant to ORS 374.313, a person holding an interest in real property which is or would be served by an approach may file a claim for relief when:

(a) The department closes an approach for which a permit was issued under ORS 374.310 or that was allowed by law prior to enactment of statu-

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tory permit requirements for approaches, or denies an application for an approach at the location of a grant or reservation of access; and

(b) Such closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit.

(2) The department may offer administrative remedies upon such closure or denial to address issues related to real property, value, utility and use; and provide a simplified procedure for resolving the claim.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6020

Definitions

For purposes of subsection 734-051-6020 the following definitions apply:

(1) “Claim for relief,” means a request for an administrative remedy for the denial of an approach application at the location of a grant or reservation of access, or the closure of an existing permitted or grandfathered approach.

(2) “Person holding an interest in real property,” means the owner of the title to real property or the contract purchaser of such real property, or record as shown on the last available complete tax assessment roll.

(3) “Administrative remedy,” “appropriate remedy” or “remedy” means the offer of monetary compensation or non-monetary benefits to a property owner that would address issues related to real property value, utility or uses, which include the equivalent value of:

(a) Actual physical reconnection of an approach to the highway or some other public facility;

(b) Construction of public roads or other public facilities, including frontage or utility roads, city streets, alleys or county roads;

(c) Improvements or modifications to the real property served or intended to be served by the approach, including paving of parking, restriping of lanes or parking, relocation of other traffic barriers and other items that directly address the impact to the property of the closure or denial; and

(d) Improvements or modifications to highways or other public facilities, including medians or other traffic channelization, signing or signal installation.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6030

Offer of Remedies

(1) The department shall make a determination of whether closure of the approach or denial of an application would create issues related to real property value, utility and use, and what remedies would address those issues.

(2) The department will provide a written statement of such remedies, if any, within thirty (30) days of the denial of the application or notice of intent to close a permitted approach.

(3) Remedies will include any benefits derived by the property by virtue of highway improvements and highway modifications, whether or not related to the specific closure.

(4) Remedies will be limited to those necessary to serve existing uses or other uses reasonably allowed given the existing zoning of the property and other factors, including physical or geographic constraints.

(5) Remedies do not include:

(a) Reimbursement for attorney fees;

(b) Relocation expenses;

(c) Lost profits;

(d) Lost opportunities; or

(e) Costs not specifically related to value, utility or use of the property itself.

(6) Offers of remedies are totally discretionary on the part of the department and are not subject to a contested case appeal.

(7) If such remedies are acceptable to the property owner and there is written acceptance:

(a) The property owner shall not be entitled to any other remedies for such closure or denial; and

(b) Any appeal under OAR 734-051-3110 shall be dismissed and any request for an appeal pursuant to 734-051-3110 shall be withdrawn.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6040

Procedure for Resolving Claims

(1) Parties may agree to participate in mediation consistent with the applicable provisions of ORS 36.180 to 36.210 at any time during the process of determining the appropriate remedies, but prior to the final order in any contested case under OAR 734-051-3110, as follows:

(a) During mediation the parties may discuss any appropriate remedies in reaching agreement.

(b) Such mediation may also occur during the post-decision collaborative discussion process under OAR 734-051-3090 when the denial or closure meets the requirements for consideration of a remedy set forth in OAR 734-051-6010(1).

(c) The property owner and the department also may enter into an agreement to collaborate if the department determines that the difference between the remedies offered and remedies claimed by the property owner is less than \$30,000.

(2) The agreement to collaborate may provide for a mutually chosen mediator as defined in ORS 36.185 to 36.210 to review the information made available to each party as of that time and other information mutually agreed to by the parties.

(3) The value of the remedies offered and claimed will include a dollar value assigned by the department to any non-monetary remedies. Such review will result in a recommendation of remedies, subject to the condition that such remedies are neither less than the lower nor more than the greater of the offer and claim, in terms of assigned monetary value.

(4) The remedies recommended by the third party will be presented to the director or the director’s designee. The director or designee shall take this recommendation into consideration in making subsequent offers of remedies.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6050

Appraisals

(1) Either the department or the property owner, at their own cost, may at any time before or during the appeal of the closure or denial under OAR 734-051-3110 have an appraisal performed to assist in determining the remedies that would address the real property value, utility or use:

(a) Each party shall notify the other party of such appraisal in a timely manner; and

(b) There shall be full disclosure and sharing between the parties of any appraisal and appraisal information.

(2) A qualified review appraiser must review all appraisals to ensure conformance with federal and state eminent domain and access laws:

(a) The reviewer may be selected by the department or selected jointly by way of mutual agreement of both the department and the property owner; and

(b) The same review appraiser must review all appraisals for one affected property to ensure consistency.

(3) The department and property owner may agree to mutually select one appraiser, share the appraisal costs and submit agreed-to instructions to the appraiser:

(a) An appraisal from an appraiser selected under this section, after review as set forth in section (2) of this rule, will be presented to the director or the director’s designee; and

(b) The director or designee shall take the information in the appraisal into consideration in making subsequent offers of remedies.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6060

Conditions of Agreement

Reaching agreement on the appropriate remedies is contingent upon:

(1) Receipt by the department of a recordable document relinquishing any grant or reservation of access at the location of the approach closure or approach application; and

(2) Termination of the permit for any approach that is a subject of the settlement.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

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734-051-6070

Delegation

(1) For OAR 734-051-6010 through 734-051-6070, the director delegates authority to the department's right of way manager or the manager's designee to:

- (a) Determine the department's offer of remedies, and
- (b) Agree to any settlement that includes providing administrative remedies.

(2) The actions in section (1) of this rule must occur prior to the final order in a contested case conducted under OAR 734-051-3110.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-7010

Access Management Plans and Interchange Area Management Plans

(1) General Provisions. The department encourages the development of access management plans and interchange area management plans to maintain and improve highway performance and safety by improving system efficiency and management before adding capacity. Where adopted, access management plans and interchange area management plans:

- (a) Must be used to evaluate development proposals; and
- (b) May be used to determine mitigation for development proposals.
- (c) Must be used in developing highway projects.

(2) Oregon Transportation Commission Adoption. Access management plans and interchange area management plans must be adopted by the commission as a transportation facility plan consistent with the provisions of OAR 731-015-0065. Prior to adoption by the commission, the department will work with local governments on any amendments to local comprehensive plans and transportation system plans and local land use and subdivision codes to ensure the proposed access management plan and interchange area management plan are consistent with the local plan and codes.

(3) Prioritization of Access Management Plans. The priority for developing access management plans should be placed on facilities with high traffic volumes or facilities that provide important statewide or regional connectivity where:

- (a) Existing developments do not meet spacing standards;
- (b) Existing development patterns, land ownership patterns, and land use plans are likely to result in a need for deviations; or
- (c) An access management plan would preserve or enhance the safe and efficient operation of a state highway or interchange.

(4) Preparers of Access Management Plans. An access management plan may be developed:

- (a) By the department;
- (b) By local jurisdictions; or
- (c) By consultants.

(5) Access Management Plan Criteria. An access management plan must comply with all of the following criteria in subsections (a) through (j) below, unless the plan documents why a criterion is not applicable:

(a) Include sufficient area to address highway operation and safety issues and development of adjoining properties including local access and circulation;

(b) Describe the roadway network, right of way, access control, and land parcels in the analysis area;

(c) Be developed in coordination with local governments and property owners in the affected area;

(d) Be consistent with any applicable interchange area management plan, corridor plan, or other facility plan adopted by the commission;

(e) Include policies, provisions and standards from local jurisdiction comprehensive plans, transportation system plans, and land use and subdivision codes that are relied upon for consistency and that are relied upon to implement the access management plan;

(f) Contain short, medium, and long-range actions to improve operations and safety and preserve the functional integrity of the highway system;

(g) Consider whether improvements to local street networks are feasible;

(h) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway designation;

(i) Consider the use of the adjoining property consistent with the comprehensive plan designation and zoning of the area; and

(j) Provide a comprehensive, area-wide solution for local access and circulation that minimizes use of the state highway for local access and circulation.

(6) Interchange Area Management Plans. Except as provided in section 8 of this rule, an interchange area management plan is required for new interchanges and should be developed for significant modifications to existing interchanges. The department encourages the development of an interchange area management plan to plan for and manage grade-separated interchange areas to ensure safe and efficient operation between connecting roadways, consistent with the intent in subsections (a) through (c) below:

(a) The department and local governmental agencies develop interchange area management plans to protect the function of interchanges by maximizing the capacity of the interchanges for safe movement from the mainline facility, to provide safe and efficient operations between connecting roadways, and to minimize the need for major improvements of existing interchanges;

(b) The department will work with local governments to prioritize the development of interchange area management plans to maximize the operational life and preserve and improve safety of existing interchanges not scheduled for significant improvements; and

(c) Priority should be placed on those facilities on the interstate highway system with crossroads carrying high volumes or providing important statewide or regional connectivity.

(7) Interchange Area Management Plan Criteria. An interchange area management plan must comply with the following criteria in subsections (a) through (h) below, unless the plan documents why compliance with a criterion is not applicable:

(a) Be developed no later than the time an interchange is designed or is being redesigned;

(b) Identify opportunities to improve operations and safety in conjunction with roadway projects and property development or redevelopment and adopt policies, provisions, and development standards to capture those opportunities;

(c) Include short, medium, and long-range actions to improve operations and safety within the designated study area;

(d) Consider current and future traffic volumes and flows, roadway geometry, traffic control devices, current and planned land uses and zoning, and the location of all current and planned approaches;

(e) Provide adequate assurance of the safe operation of the facility through the design traffic forecast period, typically twenty (20) years;

(f) Consider existing and proposed uses of all the property within the designated study area consistent with its comprehensive plan designations and zoning;

(g) Be consistent with any applicable access management plan, corridor plan or other facility plan adopted by the commission; and

(h) Include policies, provisions and standards from local comprehensive plans, transportation system plans, and land use and subdivision codes that are relied upon for consistency and that are relied upon to implement the interchange area management plan.

(8) Waiver of Requirement for an Interchange Area Management Plan. The Oregon Transportation Commission may waive the requirement for an interchange area management plan upon determining that it is not appropriate or beneficial for long-term interchange function or safety. The region manager shall prepare a report to the commission recommending the waiver. The region manager's report shall explain the reasons for the recommendation, such as the following:

(a) Reasons why there are no practical ways to improve access conditions in a manner that would result in more efficient or safer traffic operations;

(b) Factors that provide adequate assurance of the safe operation of the facility through the design traffic forecast period, typically twenty (20) years;

(c) Ways in which an access management strategy or access management plan as set forth in 734-051-5120 will adequately address opportunities to improve access conditions;

(d) The new interchange is located within a fully developed urban interchange management area as defined in the Oregon Highway Plan and there is no significant opportunity to make changes in local comprehensive plans, transportation system plans, or land use and subdivision codes that would benefit traffic safety or operations in the interchange management area;

(e) The new interchange is a lower-level service interchange, such as jug handle connections or fly-overs.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

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Department of Veterans' Affairs Chapter 274

Rule Caption: Veterans' Home Loan Program Fees.

Adm. Order No.: DVA 2-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 6-1-2012

Rules Amended: 274-020-0440, 274-045-0220

Subject: These rules are being amended to identify the addition of two new fees to be charged with regard to the Veterans' Home Loan Programs as follows:

1) A fee in the amount of \$25 for insufficient funds through the electronic funds transfer process.

2) A fee in the amount of \$495 for loan processing and document preparation.

Additionally, the processing fee for Release of Mineral Rights and Geothermal Resource Rights being amended to identify an increase from \$50 to \$150. This increase is necessary to cover the costs of County recording fees and processing.

Rules Coordinator: Bruce Craig—(503) 373-2327

274-020-0440

Fees

(1) The Director of Veterans' Affairs (director) imposes fees for the following:

- (a) New Loan;
- (b) Assumption by Eligible Veteran;
- (c) Transfer of Ownership;
- (d) Partial Release, Easement, and Modification of Mortgage;
- (e) Timber Release;
- (f) Firewood Release;
- (g) Purchase of State Owned Property;
- (h) Dishonored Check;
- (i) Reissue of Stale, Lost, Destroyed or Missing Document;
- (j) Mineral Rights and Geothermal Resource Rights Release;
- (k) Veterans' Home Improvement Loan;
- (l) Borrower requests to cancel private mortgage insurance; and
- (m) Dishonored Electronic Funds Transfer.

(2) The fee will not be waived or reduced except when in the director's opinion, requiring the fee would cause an undue hardship. In the case of a dishonored check, the fee will be waived if the check was dishonored because of a bank error.

(3) Fee Schedule:

(a) New Loan:

(A) A credit report fee may be charged in an amount not to exceed the amount charged by the credit reporting firm. A credit report fee may be charged for each applicant unless a co applicant is the applicant's spouse;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) In the event of cancellation of the application after acceptance for processing and collection of credit report and appraisal fees, any money not used or obligated for credit reports or appraisals shall be refunded;

(D) A loan fee shall be charged on a conventional loan not to exceed 2 percent of the loan amount;

(E) Flood determination fee for each loan may be charged in an amount not to exceed the amount charged by the flood determination company;

(F) A processing fee in the amount of \$495 will be charged for processing, document preparation, or other services permitted by the director that are usual and customary in the mortgage industry.

(b) Assumption by an eligible veteran under ORS 407.305. Effective with applications received on or after July 1, 1985, the director shall charge a fee of 1.125 percent of the total of the unpaid balance plus any new funds loaned. The minimum service fee shall be \$100;

(c) Transfer of Ownership:

(A) The fee for transfer shall be:

- (i) Through June 30, 1985, 1 percent of the unpaid balance;
- (ii) Effective July 1, 1985, 1.125 percent of the unpaid balance;
- (iii) Effective May 1, 1992, \$450.

(B) No fee will be charged when a transfer results from:

- (i) Divorce;
- (ii) Death;
- (iii) Marriage;

(iv) Transfer of the interest of one or more current owners to the other owner or owners; or

(v) Transfer to a relocation company on an unrecorded contract.

(d) Partial Release, Easement, and Modification of Mortgage. The director will charge the following fees:

(A) \$450 plus the cost of an appraisal for a partial release or modification of mortgage on an urban property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(B) \$450 plus the cost of an appraisal for a partial release or modification of mortgage on a farm property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(C) \$50 for consenting to an easement;

(D) \$100 for partial release involving release of a mobile home which is to be replaced with another home;

(E) \$1,100 for a partial release involving release of water rights. \$1,000 of the \$1,100 fee will be refunded if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(F) \$50 for processing request to relocate personal property mobile home;

(G) A larger fee may be charged in complex cases to cover extra processing costs; and

(H) A fee for the partial release of property to a government entity for public use as noted in ORS 407.275. This fee may be modified or waived at the discretion of the director.

(e) Timber Release:

(A) The director shall charge \$200 for a release of more than 7,500 and less than 30,000 board feet of timber. No refund will be made after application. The director shall charge \$1,200 for a release of 30,000 board feet or more of timber. \$1,000 of the \$1,200 fee will be refunded to the applicant if the request is withdrawn before the director is committed to an appraiser for the cost of a property appraisal. One release of up to and including 7,500 board feet of timber will be allowed each calendar year without a fee being charged;

(B) An increased fee may be charged in complex cases to cover extra costs.

(f) Firewood Release:

(A) The director shall charge \$200 for a release of more than six and less than 20 cords of firewood. No refund will be made after application. The director shall charge \$1,200 for a release of 20 cords or more of firewood. \$1,000 of the \$1,200 fee will be refunded to the applicant if the request is withdrawn before the director is committed to an appraiser for the cost of a property appraisal. One release of up to and including six cords of firewood, will be allowed each calendar year without a fee being charged;

(B) An increased fee may be charged in complex cases to cover extra costs.

(g) Purchase of State Owned Property:

(A) A credit report fee may be charged equal to the amount charged by the credit reporting firm. A credit report fee may be charged for each applicant unless a co applicant is the applicant's spouse;

(B) A fee of 1.125 percent shall be charged on the amount of the contract on all properties whether or not the purchaser is a veteran. The minimum fee will be \$250. There will be no fee for a cash sale. If improvements in lieu of a cash down payment are part of the purchase agreement, a \$50 fee will be charged for any necessary completion inspection(s) after the first one. The provisions of section (4) of this rule apply to any fee charged;

(C) In the event of cancellation of an offer after acceptance for processing by Loan Processing, but prior to approval, all of the earnest money deposit except \$200 shall be refunded (\$200 to be retained by the director). If an application is canceled after approval, the full amount of the earnest money deposit shall be retained by the director;

(D) Notwithstanding the provisions of paragraph (3)(g)(C) of this rule, the director may refund all of the earnest money deposit if cancellation of the application was necessitated by some unexpected event such as redemption of the property before closing, or the death, disappearance, serious injury, serious illness, job loss, or job transfer of one or more of the parties to the transaction. Parties to the transaction include members of the immediate family.

(h) Dishonored Check. Whenever a bank check issued in payment of an obligation due to the Director of Veterans' Affairs is dishonored by the bank upon which the check is drawn, a fee in the amount of \$25 will be charged. If two dishonored checks are received from the same borrower within a 12 month period, the director may require this borrower to make

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all future payments by cash, money order, cashier's check or certified check;

(i) Reissue of Stale, Lost, Destroyed or Missing Document. Whenever a document issued by the director must be reissued because it has been outstanding too long without being used, or has been lost, destroyed or for some other reason is missing, a fee in the amount of \$25 may be charged for this service. "Document" means deed, satisfaction of mortgage, satisfaction of judgment, request for reconveyance, reconveyance, assumption agreement, contract, partial release, modification of mortgage, escrow closing papers (or some other document substantially the same as the ones enumerated). This fee may be waived if there is good reason to believe that the person requesting the reissue was not responsible for the delay that caused the document to become stale or for the disappearance of the original issue;

(j) Release of Mineral Rights and Geothermal Resource Rights. The director may charge a fee of \$150 for processing an application for release of mineral and geothermal resource rights. From this fee, ODVA will pay the cost of recording any document issued. An additional \$100 may be charged if the nature of the application requires a review by the Division of State Lands to determine the mineral and geothermal resource potential. A check or money order in the amount of \$100 made payable to the Division of State Lands will be required when the Division of State Lands review is necessary.

(k) Veterans' Home Improvement Loan:

(A) A credit report fee may be charged for residential mortgage credit reports in an amount not to exceed the amount charged by the credit reporting firm;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) A flood determination fee may be charged in an amount not to exceed the amount charged by the flood determination company; and

(D) Any other fees, that may be incurred by ODVA, may be charged in an amount not to exceed the amount charged by the provider of the service.

(l) Borrower requests to cancel private mortgage insurance. The director may charge a \$100 inspection fee. In the event a full appraisal is necessary to establish value, and it is requested by the borrower, the \$100 inspection fee will be credited toward the cost of the appraisal.

(m) Dishonored Electronic Funds Transfer. Whenever an electronic funds transfer (also known as ACH) is authorized for payment of an obligation due to the Director of Veterans' Affairs and is dishonored by the bank upon which the funds transfer is drawn, a fee in the amount of \$25 will be charged. If two dishonored electronic funds transfers are received from the same borrower within a 12 month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check.

(4) Fees will be collected in advance (except for dishonored checks and electronic funds transfers). Where the director was not made a party to a transaction requiring payment of a fee, and the fee was not paid, the fee is due on demand. If payment is not made after 30 days written notice, it may be added to the amount due on the loan. The fee for dishonored checks may be added to the amount due on the loan when the check is returned by the bank. Any fee added to the amount due on the loan shall bear interest at the same rate as on the principal indebtedness. "Loan" means "contract" where context requires.

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.275 & 742.282

Stats. Implemented: 407.135, 407.145 & 407.275

Hist.: DVA 5-1982(Temp), f. & ef. 2-12-82; DVA 16-1982, f. & ef. 6-1-82; DVA 29-1982, f. 12-30-82, ef. 1-1-83; DVA 1-1983, f. 1-14-83, ef. 1-15-83; DVA 9-1983, f. & ef. 7-1-83; DVA 15-1983, f. 12-20-83, ef. 1-1-84; DVA 7-1984, f. 7-25-84, ef. 8-15-84; DVA 7-1985, f. 5-22-85, ef. 7-1-85; DVA 4-1988, f. & cert. ef. 8-15-88; DVA 3-1989, f. & cert. ef. 8-16-89; DVA 5-1990, f. 8-20-90, cert. ef. 10-1-90; DVA 5-1991, f. 7-23-91, cert. ef. 7-24-91; DVA 7-1991, f. 10-31-91, cert. ef. 11-1-91; DVA 7-1992, f. & cert. ef. 5-1-92; DVA 12-1992(Temp), f. & cert. ef. 8-19-92; DVA 3-1993, f. & cert. ef. 1-4-93; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 1-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 7-1998, f. & cert. ef. 6-23-98; DVA 3-1999, f. & cert. ef. 9-22-99; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 3-2007, f. & cert. ef. 9-25-07; DVA 2-2012, f. & cert. ef. 6-25-12

274-045-0220

Fees

(1) The Director of Veterans' Affairs (director) imposes fees for the following:

(a) New Loan;

(b) Partial Release, Easement, and Modification of Mortgage;

(c) Dishonored Check;

(d) Reissue of Stale, Lost, Destroyed or Missing Document;

(e) Mineral Rights and Geothermal Resource Rights Release;

(f) Veterans' Home Improvement Loan;

(g) Borrower requests to cancel private mortgage insurance; and

(h) Dishonored Electronic Funds Transfer.

(2) The fee will not be waived or reduced except when in the director's opinion, requiring the fee would cause an undue hardship. In the case of a dishonored check, the fee will be waived if the check was dishonored because of a bank error.

(3) Fee Schedule:

(a) New Loan:

(A) A credit report fee may be charged in an amount not to exceed the amount charged by the credit-reporting firm. A credit report fee may be charged for each applicant unless a co applicant is the applicant's spouse;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser or actual cost;

(C) In the event of cancellation of the application after acceptance for processing and collection of credit report and appraisal fees, any money not used or obligated for credit reports or appraisals shall be refunded;

(D) The director shall charge a loan fee on conventional loans not to exceed two percent (2%) of the loan amount;

(E) Flood determination fee for each loan may be charged in an amount not to exceed the amount charged by the flood determination company;

(F) A processing fee in the amount of \$495 will be charged for processing, document preparation, or other services permitted by the director that are usual and customary in the mortgage industry.

(b) Partial Release, Easement, and Modification of Mortgage. The director will charge the following fees:

(A) \$450 plus the cost of an appraisal for a partial release or modification of mortgaged property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(B) \$50 for consenting to an easement;

(C) \$100 for partial release involving release of a mobile home, which is to be replaced with another home;

(D) \$1,100 for a partial release involving release of water rights. \$1,000 of the \$1,100 fee will be refunded if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(E) A larger fee may be charged in complex cases to cover extra processing costs; and

(F) A fee for the partial release of property to a government entity for public use as noted in Chapter 238 Oregon Laws 1995. This fee may be modified or waived at the discretion of the director.

(c) Dishonored Check. Whenever a bank check issued in payment of an obligation due to the director of Veterans' Affairs is dishonored by the bank upon which the check is drawn, a fee in the amount of \$25 will be charged. If two dishonored checks are received from the same borrower within a 12 month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check;

(d) Reissue of Stale, Lost, Destroyed or Missing Document. Whenever a document issued by the director must be reissued because it has been outstanding too long without being used, or has been lost, destroyed or for some other reason is missing, a fee in the amount of \$25 may be charged for this service. "Document" means deed, satisfaction of mortgage, satisfaction of judgment, request for reconveyance, reconveyance, assumption agreement, contract, partial release, modification of mortgage, escrow closing papers (or some other document substantially the same as the ones enumerated). This fee may be waived if there is good reason to believe that the person requesting the reissue was not responsible for the delay that caused the document to become stale or for the disappearance of the original issue;

(e) Release of Mineral Rights and Geothermal Resource Rights. The director may charge a fee of \$150 for processing an application for release of mineral and geothermal resource rights. From this fee, ODVA will pay the cost of recording any document issued. An additional \$100 may be charged if the nature of the application requires a review by the Division of State Lands to determine the mineral and geothermal resource potential. A check or money order in the amount of \$100 made payable to the Division of State Lands will be required when the Division of State Lands review is necessary.

(f) Veterans' Home Improvement Loan:

(A) A credit report fee may be charged for residential mortgage credit reports in an amount not to exceed the amount charged by the credit reporting firm;

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(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) A flood determination fee may be charged in an amount not to exceed the amount charged by the flood determination company; and

(D) Any other fees that may be incurred by ODVA may be charged in an amount not to exceed the amount charged by the provider of the service.

(g) Borrower requests to cancel private mortgage insurance. The director may charge a \$100 inspection fee. In the event a full appraisal is necessary to establish value, and it is requested by the borrower, the \$100 inspection fee will be credited toward the cost of the appraisal.

(h) Dishonored Electronic Funds Transfer. Whenever an electronic funds transfer (also known as ACH) is authorized for payment of an obligation due to the Director of Veterans' Affairs and is dishonored by the bank upon which the funds transfer is drawn, a fee in the amount of \$25 will be charged. If two dishonored electronic funds transfers are received from the same borrower within a 12 month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check.

(4) Fees will be collected in advance (except for dishonored checks and electronic funds transfers). Where the director was not made a party to a transaction requiring payment of a fee, and the fee was not paid, the fee is due on demand. If payment is not made after 30 days written notice, it may be added to the amount due on the loan. The fee for dishonored checks may be added to the amount due on the loan when the bank returns the check. Any fee added to the amount due on the loan shall bear interest at the same rate as on the principal indebtedness.

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.275 & 742.282
Stats. Implemented: 407.135, 407.145 & 407.275
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 2-2012, f. & cert. ef. 6-25-12

Higher Education Coordinating Commission
Chapter 715

Rule Caption: Regarding the Procedural Rules for the higher Education Coordinating Committee.

Adm. Order No.: HECC 1-2012(Temp)

Filed with Sec. of State: 7-2-2012

Certified to be Effective: 7-2-12 thru 12-29-12

Notice Publication Date:

Rules Adopted: 715-001-0000, 715-001-0005, 715-001-0010

Subject: 715-001-0000 — Regarding Notice of Proposed Rule.

715-001-0005 — Regarding Model Rules of Proposal.

715-001-0010 — Regarding Establishing Fees for Public Records.

Rules Coordinator: Seth Allen—(503) 378-8213

715-001-0000

Notice of Proposed Rule

(1) Before permanently adopting, amending or repealing any rule, the Higher Education Coordinating Commission shall give notice of the proposed adoption, amendment or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule to be adopted;

(b) By mailing or e-mailing, at least 28 days before the effective date of the rule, a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(8);

(c) By mailing or e-mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective day of the rule; and,

(d) By mailing or e-mailing a copy of the notice to persons, organizations and publications identified by the Commission and established educational, student and parent organizations that have submitted mailing or e-mailing addresses to the Board.

(2) Persons who wish to be placed on the Higher Education Coordinating Commission's mailing or e-mailing list may request in writing or by e-mail that the Board send to the person copies of its notice of proposed rulemaking.

(3) The Commission may update the mailing and e-mailing lists described in this rule annually by requesting persons to confirm that they wish to remain on the lists. If a person does not respond to a request for confirmation within 28 days of the date the Commission sends the request, the Commission will remove the person from the mailing and e-mailing lists. Any person removed from the mailing or e-mailing lists will be returned to the mailing or e-mailing list upon request, provided that the person provides a mailing address or e-mailing address to which notice may be sent.

Stat. Auth.: ORS 183.335 & 183.341(4)
Stats. Implemented: ORS 183.335
Hist.: HECC 1-2012(Temp), f. & cert. ef. 7-2-12 thru 12-29-12

715-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Higher Education Coordinating Commission adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012.

[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 Oregon Education Investment Board.]

Stat. Auth.: ORS 183.335 & 183.341(4)
Stats. Implemented: ORS 183.335
Hist.: HECC 1-2012(Temp), f. & cert. ef. 7-2-12 thru 12-29-12

715-001-0010

Establishing Fees for Public Records

(1) The Higher Education Coordinating Commission may charge a fee of 25 cents per page for supplying copies of public records on request.

(2) The Commission may charge an additional fee reasonably calculated to provide reimbursement for actual costs incurred in summarizing, compiling, or tailoring the public records to make them available for inspection, and for costs of conveying such records to the requester. Employee time required for such purposes shall be billed at a rate not to exceed cost of employee time to the Commission. The Commission may include the cost for time spent by an attorney for the Commission in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records.

(3) No additional fee will be charged for providing records in an alternative format to individuals with vision or hearing impairments when required by the Americans with Disabilities Act.

(4) The Chair of the Higher Education Coordinating Commission or designee, or a person designated by the chair of the Commission, may reduce or waive fees when:

(a) The time spent making the records available was negligible;

(b) Supplying the requested records is within the normal scope of Commission activity; or,

(c) Supplying the public records is in the public interest because making the record available primarily benefits the general public.

Stat. Auth.: 2011 OL Ch. 519, Sec. 1 & ORS 192.440
Stats. Implemented: ORS 192.440
Hist.: HECC 1-2012(Temp), f. & cert. ef. 7-2-12 thru 12-29-12

Rule Caption: Regarding rules for the Higher Education Coordinating Committee.

Adm. Order No.: HECC 2-2012(Temp)

Filed with Sec. of State: 7-3-2012

Certified to be Effective: 7-3-12 thru 12-30-12

Notice Publication Date:

Rules Adopted: 715-010-0005, 715-010-0010, 715-010-0020

Subject: 715-010-0005 — Regarding implementing Oregon Revised Statutes (ORS) 348.594 to 348.615 and 348.992 for the purpose of ensuring the quality of higher education offered to Oregon students.

715-010-0010 — regarding delegating the duties, functions, and powers of the Higher Education Coordinating Committee.

715-010-0020 — Regarding Establishing Fees for Public Record.

Rules Coordinator: Seth Allen—(503) 378-8213

715-010-0005

Implementing ORS 348.594 to 348.615 and 348.992

This rule implements Oregon Revised Statutes (ORS) 348.594 to 348.615 and 348.992 for the purpose of providing for the protection of the citizens of Oregon and their post-secondary schools by ensuring the quality of higher education offered to Oregon students and preserving the integrity of an academic degree as a public credential. The term "manager" as used in this rule means the employee in the position of responsibility for managing the programs and activities implemented by the aforementioned laws and these rules.

Stat. Auth.: ORS
Stats. Implemented: ORS
Hist.: HECC 2-2012(Temp), f. & cert. ef. 7-3-12 thru 12-30-12

ADMINISTRATIVE RULES

715-010-0010

Delegating the duties, functions, and powers of the Higher Education Committee

(1) This rule is for the purpose of delegating the duties, functions, and powers of the Higher Education Coordinating Commission with respect to degree authorization, degree validation, and review of new academic programs under ORS 348.594 to 348.615 and 348.992 to the manager of these programs and activities.

(a) Degree authorization shall be the responsibility of the manager, who shall have final authority with regard to:

(A) Authorization of post-secondary schools to offer academic degree programs (under Oregon Administrative Rules 583-030);

(B) Authorization of approved degree-granting schools to offer academic programs leading to a certificate or diploma;

(C) Termination of any activities related to higher education by an education entity not authorized to offer degrees and post-secondary academic programs in Oregon and ineligible for exemption from authorization under Oregon statutes.

(b) Degree validation under OAR 583-050 shall be the responsibility of the manager, who shall have final authority with regard to:

(A) Validation of claims of degree possession and determination of appropriate degree use under Oregon law;

(B) Termination of substandard or fraudulent degree activities;

(C) Termination of activities of diploma mills operating in or from Oregon;

(D) Termination of any operation in or from Oregon of post-secondary accrediting bodies that are not recognized by the United States Department of Education;

(e) Review of proposed new publicly-funded post-secondary programs and locations (under OAR 583-040) shall be staffed by the manager. The commission will remain the final authority for approval or disapproval of any proposed post-secondary program or location that is the subject of an adverse inter-segmental impact claim. The functions and services under the responsibility of the manager include:

(A) Notification and dissemination of new publicly-funded academic program proposals to private colleges and career schools,

(B) Mediation between private and public post-secondary institutions to resolve issues related to claims of adverse impact,

(C) Offering recommendations to the proposing and responding schools or their governing boards, and

(D) Mediation between the boards governing the involved schools.

(E) If the manager is unable to resolve all issues, it is the responsibility of the manager to furnish all pertinent information and provide recommendations to the commission to support continuation of negotiations with the involved boards and the commission's determination of approval or disapproval.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: HECC 2-2012(Temp), f. & cert. ef. 7-3-12 thru 12-30-12

715-010-0020

Establishing Fees for Public Record

A fee may be imposed on any school or person requesting services or information from the commission pertaining to the administration of its functions under ORS 348.594 to 348.615. The amount of the fee shall be established by the manager to recover designated expenses incurred by the commission in carrying out the administration of ORS 348.594 to 348.615. Any fees collected by the commission, for services that are the responsibility of the manager shall be deposited in the Degree Authorization Account established under ORS 348.601 and used exclusively for purposes directly related to the duties and functions of the commission under the authority of the manager as delegated by the commission.

Stat. Auth.: ORS

Stats. Implemented: ORS

Hist.: HECC 2-2012(Temp), f. & cert. ef. 7-3-12 thru 12-30-12

Occupational Therapy Licensing Board Chapter 339

Rule Caption: Require applicants to take Law Ethics Exam and require other background checks .

Adm. Order No.: OTLB 1-2012

Filed with Sec. of State: 7-3-2012

Certified to be Effective: 9-1-12

Notice Publication Date: 5-1-2012

Rules Adopted: 339-010-0013

Rules Amended: 339-010-0012

Subject: The first rule allows the Board to require an Oregon Law Ethics Exam to be taken and passed by applicants.

The second rule adds to the rule on Fingerprinting that the Board may also require criminal history checks, including Law Enforcement Data System (LEDS).

Rules Coordinator: Felicia Holgate—(971) 673-0198

339-010-0012

Background Checks and Fingerprinting Requirements

The Board may require Oregon or National criminal history checks, including fingerprints or other background checks such as the Law Enforcement Data System (LEDS), from any applicants for a license as an occupational therapist or occupational therapy assistant, a limited permit, an applicant to reinstate a lapsed license, and applicant or licensee under investigation to determine their fitness. The fingerprints will be on forms prescribed by the Board. The Board will provide information on where acceptable fingerprints may be obtained and what acceptable procedure is to be used for submitting them. The Board will use the fingerprints to conduct Criminal History Checks. Fingerprint cards will be destroyed as required by law.

Stat. Auth.: ORS 675.320; Other Auth.: OAR 339-005-0000

Stats. Implemented:

Hist.: OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11; OTLB 1-2012, f. 7-3-12, cert. ef. 9-1-12

339-010-0013

Law Ethics Exam Requirement

Applicants for licensure for an Oregon Occupational Therapy license shall be required to take and successfully pass an Oregon Law/ethics examination with a passing score set by the board.

Stat. Auth.: ORS 675.320 & 675.230

Stats. Implemented:

Hist.: OTLB 1-2012, f. 7-3-12, cert. ef. 9-1-12

Oregon Business Development Department Chapter 123

Rule Caption: Rule modification related to the 1% for Arts in Public Buildings.

Adm. Order No.: OBDD 10-2012

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 6-1-2012

Rules Amended: 123-475-0015

Subject: Modification of rule to include up to three visual artists or other design professionals that will be appoint by the Oregon Arts Commission to the Selection Committee.

This part of rule 123-475-0015 was mistakenly repealed in the last rulemaking for this division in January 2012.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-475-0015

Selection Committee

(1)(a) A Selection Committee shall be established for each Program Project. The Selection Committee, on behalf of the Designated Agencies, shall determine the scope, direction, and particular needs of the Project. Except as provided in subsection (b) of this rule, the Selection Committee is solely responsible for artist selection, review of design, execution, placement and acceptance of Works of Art, and shall communicate such progress to the Designated Agencies.

(b) Exception to sole responsibility for review: The Oregon Arts Commission and the Contracting Agency shall identify other review bodies whose oversight may be required by law or agency policy including, without limitation, state or local historic preservation committees, city design review committees and formalized campus design committees. In such cases, the Selection Committee's recommendation will be submitted for review and approval by these bodies prior to execution of any contracts for Works of Art.

(c) Informal committees established by any of the Designated Agencies, such as user groups of a Project, shall be kept informed of Selection Committee progress, but have no role in approval of the Selection Committee's recommendations. The Designated Agency that establishes an informal committee is responsible for notifying the Selection Committee of the establishment of the informal committee.

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(2) The Selection Committee shall consist of up to nine members designated by the Oregon Arts Commission as follows:

- (a) The Project Architect;
- (b) The Director of the Oregon Arts Commission or designee thereof;
- (c) Up to three visual artists or other design professionals appointed by the Oregon Arts Commission (the selection of the design professionals will be made after consultation with the resident agency). The Arts Commission shall strive to appoint Selection Committee members with varied perspectives, including multicultural representation;

(d) The Director of the contracting agency, or designee thereof, most appropriately the planning/construction project manager;

(e) The Chair of the Capitol Planning Advisory Board, or the Chair's designee, if the project is in Marion or Polk County area (ORS 276 .028);

(f) Up to one representative of each resident agency, or in the case of a University, each program, college or school with significant use of the facility;

(g) Such other people who qualify and are approved by the Designated Agencies.

(3) Up to 5 Non-Voting Advisors may be appointed by the Contracting Agency and Resident Agency of the facility to serve on the screening committee and may include: students, museum director, curator, educator, art historian, collector, and concerned members of the community, or other qualified individuals

(4) Chairman of the Selection Committee: The Public Arts Coordinator of the Oregon Arts Commission shall serve as non-voting chairman.

(5) Voting: Each member of the Selection Committee designated pursuant to Section (2) of this rule will have one vote. A majority vote of members present shall determine the selection recommendations to be made to the Designated Agencies. At least one-half of the members of the Selection Committee must be present to have a vote.

Stat. Auth.: ORS 359.025, 359.142
Stats. Implemented: ORS 276.073 – 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0015, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 10-2012, f. 6-29-12, cert. ef. 7-1-12

Oregon Health Authority Chapter 943

Rule Caption: Abuse or Mistreatment Reporting and Protective Services in Community Programs for Adults with Mental Illness.

Adm. Order No.: OHA 3-2012

Filed with Sec. of State: 6-28-2012

Certified to be Effective: 6-28-12

Notice Publication Date: 11-1-2011

Rules Adopted: 943-045-0250, 943-045-0260, 943-045-0280, 943-045-0290, 943-045-0300, 943-045-0310, 943-045-0320, 943-045-0330, 943-045-0340, 943-045-0350, 943-045-0360, 943-045-0370

Rules Repealed: 943-045-0250(T), 943-045-0260(T), 943-045-0280(T), 943-045-0290(T), 943-045-0300(T), 943-045-0310(T), 943-045-0320(T), 943-045-0330(T), 943-045-0340(T), 943-045-0350(T), 943-045-0360(T), 943-045-0370(T)

Subject: HB 2009 created the Oregon Health Authority and transferred to the Authority the Department of Human Services' Divisions responsible for health and health care. With the creation of a new agency, the community programs and community facilities serving adults with mental illness moved to the Authority. Community programs and facilities serving adults with developmental disabilities will continue to be governed by the Department of Human Services' rule found at OAR 407-045-0250 to 0370. The Authority needs to adopt these rules to reflect the separation of the Department of Human Services and Oregon Health Authority.

These rules also include the definition of mistreatment and an effective date of December 5, 2011.

These rules are being re-filed to correct a filing error and to comply with ORS 183.715, which requires an agency to submit a copy of the adopted rules to Legislative Counsel within ten days after the agency files the certificate and order with the Secretary of State. The agency submitted the adopted rules by mail on November 29, 2011 to the Secretary of State and Legislative Counsel. Secretary of State received the certificate and order on December 1, 2011. Legislative

Counsel received the submitted documentation on November 30, 2011.

Rules Coordinator: Evonne Alderete—(503) 932-9663

943-045-0250

Purpose

These rules, OAR 943-045-0250 to 943-045-0370, shall be effective December 5, 2011. these rules prescribe standards and procedures for the investigation of, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse or mistreatment investigation and protective services report.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0260

Definitions

As used in OAR 943-045-0250 to 943-045-0370, the following definitions apply:

(1) "Abuse of an adult with mental illness" means:

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(b) "Neglect" means the active or passive withholding of services necessary to maintain the health and well-being of an adult, which leads to physical harm of an adult. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(c) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(D) Physical abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(d) "Sexual abuse" including:

(A) An act that constitutes a crime under ORS 163.375 (rape in the first degree), 163.405 (sodomy in the first degree), 163.411 (unlawful penetration in the first degree), 164.415 (sexual abuse in the third degree), 163.425 (sexual abuse in the second degree), (163.427 (sexual abuse in the first degree), 163.456 (public indecency) or 163.467 (private indecency).

(B) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(C) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.

(D) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(F) As defined in ORS 163.305, "sexual contact" means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(G) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to mistreatment.

(2) "Abuse or Mistreatment Investigation and Protective Services Report" means a completed report.

(3) "Adult" means an individual who is 18 years of age or older who:

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(a) Has a mental illness and is receiving services from a community program or facility;

(b) Receives services in a residential treatment home, residential care facility, adult foster home, or is in a facility approved by the Addictions and Mental Health Division (Division) for acute care services or crisis respite when the adult is in custody in the facility pursuant to ORS 426.072, and;

(c) Is the alleged abuse or mistreatment victim.

(4) "Adult Foster Home" means any home licensed by the Authority's Addictions and Mental Health Division pursuant to OAR 309-040-0300 et.seq., in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825.

(5) "Adult protective services" means the necessary actions taken to prevent abuse or mistreatment or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused or mistreated adult's person, property, or funds.

(6) "Authority" means the Oregon Health Authority.

(7) "Caregiver" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(8) "Community facility" means a community residential treatment home, residential care facility, adult foster home. "Community facility" also means a facility approved by the Division for acute care services or crisis respite when the adult is in custody in the facility pursuant to ORS 426.072.

(9) "Community program" means the community mental health program as established in ORS 430.610 to 430.695.

(10) "Designee" means the community program.

(11) "Department" means the Department of Human Services.

(12) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse or mistreatment occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the abuse or mistreatment, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(13) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(14) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 295.

(15) "Mistreatment" means mistreatment as defined in OAR 309-035-0105, 309-035-0260 and 309-040-0305.

(16) "Not substantiated" means the preponderance of evidence establishes the alleged abuse or mistreatment did not occur.

(17) "Office of Investigations and Training" (OIT) means the Department's Shared Services Division responsible for the investigation of allegations of abuse or mistreatment made in community programs and community facilities for adults with mental illness

(18) "Provider agency" means an entity licensed or certified to provide services to adults in Adult Foster Homes (AFH), Residential Treatment Homes (RTH) or Residential Care Facilities (RCF). "Provider agency" also means a facility approved by the Division for acute care services or crisis respite when the adult is in custody in the facility pursuant to ORS 426.072.

(19) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide, or employee of an in-home health services organization;

(c) Employee of the Authority, Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech, or occupational therapist;

(h) Information and referral, outreach, or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist;

(k) Firefighter or emergency medical technician; or

(l) Any public official who comes in contact with adults in the performance of the official's duties.

(20) "Residential Care Facility (RCF)" means a facility licensed by the Division that is operated to provide services on a 24-hour basis for six or more residents pursuant to OAR 309-035-0100 et.seq..

(21) "Residential Treatment Home (RTH)" means a home licensed by the Division that is operated to provide services on a 24-hour basis for five or fewer residents pursuant to OAR 309-035-0250 et.seq..

(22) "Substantiated" means that the preponderance of evidence establishes the abuse or mistreatment occurred.

(23) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0280

Training for Individuals Investigating Reports of Alleged Abuse or Mistreatment

(1) The Authority shall provide sufficient and timely training and consultation to community programs to ensure that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse or mistreatment. Training shall include initial and continuing education of any individual designated to conduct protective services investigations.

(2) The training shall address the cultural and social diversity of the State of Oregon.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0290

General Duties of the Community Program and Initial Action on Report of Alleged Abuse or Mistreatment

(1) For the purpose of carrying out these rules, community programs are Authority designees.

(2) If mandatory reporters have reasonable cause to believe abuse of an adult has occurred, the reporter must report the abuse to the community program, to a local law enforcement agency, or to the Authority when the reporter believes a crime may have been committed.

(3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training and to demonstrate an understanding of investigative core competencies.

(4) If the Authority or community program has reasonable cause to believe abuse or mistreatment occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and completed protective services report.

(5) If the Authority or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse or mistreatment, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse or mistreatment investigation and completed protective services report.

(6) The Authority or community program may share information prior to the completion of the abuse or mistreatment investigation and protective services report if the information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

(7) Each community program must establish an after hours reporting system.

(8) Upon receipt of any report of alleged abuse or mistreatment or upon receipt of a report of a death that may have been caused by other than accidental or natural means, the community program must begin:

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(a) Investigation into the nature and cause of the alleged abuse or mistreatment within one working day of receipt of the report to determine if abuse or mistreatment occurred or whether a death was caused by abuse or mistreatment;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(9) The community program receiving a report alleging abuse or mistreatment must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:

(a) The name, age, and present location of the adult;

(b) The names and addresses of the adult's programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse or mistreatment, including any evidence of previous abuse or mistreatment of the adult or evidence of previous abuse or mistreatment by the person alleged to have committed the abuse or mistreatment;

(d) Any information that led the individual making the report to suspect abuse or mistreatment had occurred;

(e) Any information that the individual believes might be helpful in establishing the cause of the abuse or mistreatment and the identity of the person alleged to have committed the abuse or mistreatment; and

(f) The date of the incident.

(10) The community program shall maintain all reports of abuse or mistreatment in a confidential location.

(11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.

(12) Upon receipt of a report of abuse or mistreatment, the community program must notify the case manager providing primary case management services to the adult. The community program must also notify the guardian of the adult unless doing so would undermine the integrity of the abuse or mistreatment investigation or a criminal investigation because the guardian or case manager is suspected of committing abuse or mistreatment.

(13) If there is reasonable cause to believe that abuse or mistreatment has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those services immediately. Under these circumstances, the community program must also advise the provider agency or guardian about the allegation, and must include any information appropriate or necessary for the health, safety, and best interests of the adult in need of protection.

(14) The community program shall immediately, but no later than one working day, notify the Authority it has received a report of abuse or mistreatment, in the format provided by the Authority.

(15) In addition to the notification required by section (12) of these rules, if the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, guardian, and any other individual with responsibility for providing services and protection, unless doing so would compromise the safety, health, or best interests of the adult in need of protection, or would compromise the integrity of the abuse or mistreatment investigation or a criminal investigation. The notice shall include information that the case shall be assigned for investigation, identify the investigator, and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

(16) If the community program determines from the report that there is no reasonable cause to believe abuse or mistreatment occurred, the community program shall notify the provider agency within five working days that a protective services investigation shall not commence and explain the reasons for that decision. The community program shall document the notice and maintain a record of all notices.

(17) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or mistreatment or where the death occurred under suspicious or unknown circumstances.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0300

Investigation of Alleged Abuse or Mistreatment

(1) Investigation of abuse or mistreatment shall be thorough and unbiased. Community programs may not investigate allegations of abuse or mis-

treatment made against employees of the community program. Investigations of community program staff shall be conducted by the Authority or other community programs not subject to an actual or potential conflict of interest.

(2) In conducting an abuse or mistreatment investigation, the investigator must:

(a) Make in-person contact with the adult;

(b) Interview the adult, witnesses, the person alleged to have committed the abuse or mistreatment, and other individuals who may have knowledge of the facts of the abuse or mistreatment allegation or related circumstances. Interviews must be conducted in-person where practicable. The investigator must attempt to elicit the date of birth for each individual interviewed and shall obtain the date of birth of any person alleged to have committed the alleged abuse or mistreatment;

(c) Review all evidence relevant and material to the complaint; and

(d) Photograph the adult consistent with forensic guidelines, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse or mistreatment and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.

(3) All records necessary for the investigation shall be available to the community program for inspection and copying. A community facility shall provide community programs access to employees, the adult, and the premises for investigation purposes.

(4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse or mistreatment, the community program shall also perform its own investigation as long as it does not interfere with the law enforcement agency investigation under the following circumstances:

(a) There is potential for action by a licensing or certifying agency;

(b) Timely investigation by law enforcement is not probable; or

(c) The law enforcement agency does not complete a criminal investigation.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse or mistreatment, the community program must communicate and cooperate with the law enforcement agency.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0310

Assessment for and Provision of Protective Services to the Adult

The community program shall ensure that appropriate and necessary protective services are provided to the adult to prevent further abuse or mistreatment and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

(1) Arranging for the immediate protection of the adult;

(2) Contacting the adult to assess his or her ability to protect his or her own interest or give informed consent;

(3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;

(4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;

(5) Assisting in and arranging for appropriate services and alternative living arrangements;

(6) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse or mistreatment;

(7) Providing advocacy to assure the adult's rights and entitlements are protected; and

(8) Consulting with the community facility, program, or others as appropriate in developing recommendations or requirements to prevent further abuse or mistreatment.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731

Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0320

Abuse or Mistreatment Investigation and Protective Services Report

(1) The Authority shall provide abuse or mistreatment investigation and protective services report formats.

(2) Upon completion of the investigation and within 45 calendar days of the date the community program has assigned a report alleging abuse or mistreatment for investigation, the community programs shall prepare an abuse or mistreatment investigation and protective services report. This 45-day time period does not include an additional five-working day period

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allowing OIT to review and approve the report. The protective services report shall include:

- (a) A statement of the allegations being investigated, including the date, location, and time;
- (b) A list of protective services provided to the adult;
- (c) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;
- (d) A summary of findings and conclusion concerning the allegation of abuse or mistreatment;
- (e) A specific finding of “substantiated,” “inconclusive,” or “not substantiated”;
- (f) A plan of action necessary to prevent further abuse or mistreatment of the adult;
- (g) Any additional corrective action required by the community program and deadlines for completing these actions;
- (h) A list of any notices made to licensing or certifying agencies;
- (i) The name and title of the individual completing the report; and
- (j) The date the report is written.

(3) In cases where, for good cause shown, the protective services investigator cannot complete the report within 45 days, the investigator shall submit a request for time extension to OIT.

(a) An extension may be granted for good cause shown which includes but is not limited to:

- (A) When law enforcement is conducting an investigation;
- (B) A material party or witness is temporarily unavailable;
- (C) New evidence is discovered;
- (D) The investigation is complex (e.g. large numbers of witnesses need to be interviewed taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required); or
- (E) For some other mitigating reason.

(b) When granting an extension, OIT shall consult with the program about the need for an extension and determine the length of the extension as necessary.

(c) The community program shall notify the provider agency and guardian when an extension is granted and advise them of the new report due date.

(4) A copy of the final abuse or mistreatment investigation and protective services report shall be provided to the Authority within five working days of the report’s completion and approval by OIT.

(5) The community program must provide notice of the outcome of the investigation, or assure that notice is provided to the alleged victim, guardian, provider agency, accused person, and to any law enforcement agency which previously received notice of the initial report. Notice of outcome shall be provided to a reporter upon the reporter’s request. Notice of outcome must be made within five working days after the date the case is completed and approved by OIT. The community program must document how the notice was provided.

(6) A centralized record of all abuse or mistreatment investigation and protective services reports shall be maintained by community programs for all abuse or mistreatment investigations conducted in their county, and by the Authority for all abuse or mistreatment investigations in the state.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0330

Disclosure of the Abuse or Mistreatment Investigation and Protective Services Report and Related Documents

(1) Portions of the abuse or mistreatment investigation and protective services report and underlying investigatory documents are confidential and are not available for public inspection. Pursuant to ORS 430.763, names of abuse or mistreatment reporters, witnesses, and the alleged abuse or mistreatment victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse or mistreatment investigation and protective services report that contains “individually identifiable health information,” as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, and ORS 192.520 and 179.505-179.509.

(2) Notwithstanding section (1) of this rule, the Authority shall make confidential information available, including any photographs if appropriate, to any law enforcement agency, public agency that licenses or certifies facilities or licenses or certifies the individuals practicing therein, and any

public agency providing protective services for the adult. The Authority shall make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not redisclose the confidential information to unauthorized individuals or entities, as required by state or federal law.

(4) The community program shall prepare a redacted version of the final completed abuse or mistreatment investigation report within 10 days after the date of the final report. The redacted report shall not contain any confidential information which is prohibited from disclosure pursuant to state or federal law. The redacted report shall be submitted to the provider agency.

(5) The community program shall provide a redacted version of the written report to the public for inspection upon written request.

(6) When the abuse or mistreatment investigation and protective services report is conducted by a community program as the Authority’s designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Authority.

Stat. Authority: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0340

Prohibition Against Retaliation

(1) A community facility, community program, or individual shall not retaliate against any individual who reports suspected abuse or mistreatment in good faith, including the adult.

(2) Any community facility, community program, or individual that retaliates against any individual because of a report of suspected abuse or mistreatment shall be liable, according to ORS 430.755, in a private action to that individual for actual damages and, in addition, a civil penalty up to \$1,000, notwithstanding any other remedy provided by law.

(3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse or mistreatment. For purposes of this sub-section, “adverse action” means any action taken by a community facility, community program, or individual involved in a report against the individual making the report or against the adult because of the report and includes but is not limited to:

- (a) Discharge or transfer from the community facility, except for clinical reasons;
- (b) Termination of employment;
- (c) Demotion or reduction in remuneration for services; or
- (d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0350

Immunity of Individuals Making Reports in Good Faith

(1) Any individual who makes a good faith report and who had reasonable grounds for making the report shall have immunity from civil liability with respect to having made the report.

(2) The reporter shall have the same immunity in any judicial proceeding resulting from the report as may be available in that proceeding.

(3) An individual who has personal knowledge that an employee or former employee of the adult was found to have committed abuse is immune from civil liability for the disclosure to a prospective employer of the employee of known facts concerning the abuse.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735–430.765, 443.400 – 443.460, 443.705 – 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0360

Authority Investigation of Alleged Abuse or Mistreatment

(1) If determined necessary or appropriate, the Authority may conduct an investigation rather than allow the community program to investigate the alleged abuse or mistreatment or in addition to the investigation by the community program. Under such circumstances, the community program must

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receive authorization from the Authority before conducting any separate investigation.

(2) The community program shall make all records necessary for the investigation available to the Authority for inspection and copying. The community facilities and community programs must provide the Authority access to employees, the adult, and the premises for investigation purposes.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

943-045-0370

County Multidisciplinary Teams

(1) The community program must participate in its county Multidisciplinary Team (MDT) to coordinate and collaborate on protective services for the abuse or mistreatment of adults with developmental disabilities or mental illness or both.

(2) All confidential information protected by state and federal law that is shared or obtained by MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except as permitted by law.

(3) The community program or OIT shall provide an annual report to the MDT reporting the number of investigated and substantiated allegations of abuse or mistreatment of adults and the number referred to law enforcement in the county.

Stat. Auth.: ORS 179.040 & 413.042, 414.715 & 430.731
Stats. Implemented: ORS 413.032, 430.735-430.765, 443.400 - 443.460, 443.705 - 443.825
Hist.: OHA 11-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 29-2011, f. 12-1-11, cert. ef. 12-5-11; OHA 3-2012, f. & cert. ef. 6-28-12

Rule Caption: Amend Electronic Data Transmission rules to include Coordinated Care Organizations.

Adm. Order No.: OHA 4-2012(Temp)

Filed with Sec. of State: 7-12-2012

Certified to be Effective: 7-12-12 thru 1-6-13

Notice Publication Date:

Rules Amended: 943-120-0100, 943-120-0110, 943-120-0112, 943-120-0114, 943-120-0116, 943-120-0118, 943-120-0120, 943-120-0170, 943-120-0180, 943-120-0200

Subject: The Authority needs to amend these rules to ensure the Authority's EDT rules include Coordinated Care Organization related to the functionality of the Oregon Replacement Medicaid Management Information System (MMIS) in conjunction with the Health Insurance Portability and Accountability Act (HIPAA) transactions and codes set standards for the exchange of electronic data.

Rules Coordinator: Evonne Alderete—(503) 932-9663

943-120-0100

Definitions

The following definitions apply to OAR 943-120-0100 through 943-120-0200:

(1) "Access" means the ability or means necessary to read, write, modify, or communicate data or information or otherwise use any information system resource.

(2) "Agent" means a third party or organization that contracts with a provider, allied agency, coordinated care organization (CCO) or prepaid health plan (PHP), to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(3) "Allied Agency" means local and regional allied agencies and includes local mental health authority, community mental health programs, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging, federally recognized American Indian tribes, and other governmental agencies or regional authorities that have a

contract (including an interagency, intergovernmental, or grant agreement, or an agreement with an American Indian tribe pursuant to ORS 190.110) with the Oregon Health Authority to provide for the delivery of services to covered individuals and that request to conduct electronic data transactions in relation to the contract.

(4) "Authority" or "Oregon Health Authority" means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, the agencies under the authority of the Authority are the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(5) "Authority Network and Information Systems" means the Authority's computer infrastructure that provides personal communications, confidential information, regional, wide area and local networks, and the internetworking of various types of networks on behalf of the Authority.

(6) "Clinic" means a group practice, facility, or organization that is 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; and the group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility, or organization. If the entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(7) "Confidential Information" means information relating to covered individuals which is exchanged by and between the Authority, a provider, CCO, PHP, clinic, allied agency, or agents for various business purposes, but which is protected from disclosure to unauthorized individuals or entities by applicable state and federal statutes such as ORS 414.679, 344.600, 410.150, 411.320, 418.130, or the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations. These statutes and regulations are collectively referred to as "Privacy Statutes and Regulations."

(8) "Contract" means a specific written agreement between the Authority and a provider, CCO, PHP, clinic, or allied agency that provides or manages the provision of services, goods, or supplies to covered individuals and where the Authority and a provider, CCO, PHP, clinic, or allied agency may exchange data. A contract specifically includes, without limitation, an Authority provider enrollment agreement, fully capitated health plan managed care contract, dental care organization managed care contract, mental health organization managed care contract, chemical dependency organization managed care contract, physician care organization managed care contract, coordinated care organization contract, a county financial assistance agreement, or any other applicable written agreement, inter-agency agreement, intergovernmental agreement, or grant agreement between the Authority and a provider, CCO, PHP, clinic, or allied agency.

(9) "Coordinated Care Organization" (CCO) means an entity that has been certified by the Authority to provide coordinated and integrated health services.

(10) "Covered Entity" means a health plan, health care clearing house, health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR 162.100 through 162.1902, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414.

(11) "Covered Individual" means individuals who are eligible for payment of certain services or supplies provided to them or their eligible dependents by or through a provider, CCO, PHP, clinic, or allied agency under the terms of a contract applicable to a governmental program for which the Authority processes or administers data transmissions.

(12) "Data" means a formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by individuals or by automatic means.

(13) "Data Transmission" means the transfer or exchange of data between the Authority 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.

(14) "Department" means the Department of Human Services.

(15) "Direct Data Entry (DDE)" means the process using dumb terminals or computer browser screens where data is directly keyed into a

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health plan's computer by a provider or its agent, such as through the use of a web portal.

(16) "Electronic Data Interchange (EDI)" means 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 Authority designates for EDI transactions. For purposes of these rules (OAR 943-120-0100 through 943-120-0200), EDI does not include electronic transmission by web portal.

(17) "Electronic Data Interchange Submitter" means an individual or entity authorized to establish the electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(18) "Electronic Media" means electronic storage media including memory devices in computers or computer hard drives; any removable or transportable digital memory medium such as magnetic tape or disk, optical disk, or digital memory card; or transmission media used to exchange information already in electronic storage media. Transmission media includes but is not limited to the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic storage media. Certain transmissions, including paper via facsimile and voice via telephone, are not considered transmissions by electronic media because the information being exchanged did not exist in electronic form before transmission.

(19) "Electronic Media Claims (EMC)" means an electronic media means of submitting claims or encounters for payment of services or supplies provided by a provider, CCO, PHP, clinic, or allied agency to a covered individual.

(20) "Electronic Remittance Advice (ERA)" means an electronic file in X12 format containing information pertaining to the disposition of a specific claim for payment of services or supplies rendered to covered individuals which are filed with the Authority on behalf of covered individuals by providers, clinics, or allied agencies. The documents include, without limitation, the provider name and address, individual name, date of service, amount billed, amount paid, whether the claim was approved or denied, and if denied, the specific reason for the denial. For CCOs or PHPs, the remittance advice file contains information on the adjudication status of encounter claims submitted.

(21) "Electronic Data Transaction (EDT)" means a transaction governed by the Health Insurance Portability and Accountability Act (HIPAA) transaction rule, conducted by either web portal or EDI.

(22) "Envelope" means a control structure in a mutually agreed upon format for the electronic interchange of one or more encoded data transmissions either sent or received by an EDI submitter or the Authority.

(23) "HIPAA Transaction Rule" means the standards for electronic transactions at 45 CFR Part 160 and 162 as revised effective January 16, 2009 (from version in effect on January 1, 2008) adopted by the Department of Health and Human Services (DHHS) to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et. seq.

(24) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of an information system or information asset including but not limited to unauthorized disclosure of information, failure to protect user IDs, and theft of computer equipment using or storing Authority information assets or confidential information.

(25) "Individual User Profile (IUP)" means Authority forms used to authorize a user, identify their job assignment, and the required access to the Authority's network and information system. It generates a unique security access code used to access the Authority's network and information system.

(26) "Information Asset" means all information, also known as data, provided through the Authority, regardless of the source, which requires measures for security and privacy of the information.

(27) "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and trained personnel necessary for successful data transmission.

(28) "Lost or Indecipherable Transmission" means a data transmission which is never received by or cannot be processed to completion by the receiving party in the format or composition received because it is garbled or incomplete, regardless of how or why the message was rendered garbled or incomplete.

(29) "Mailbox" means the term used by the Authority to indicate trading partner-specific locations on the Authority's secure file transfer protocol (SFTP) server to deposit and retrieve electronic data identified by a unique Authority assigned trading partner number.

(30) "Password" means the alpha-numeric codes and special characters assigned to an EDI submitter by the Authority for the purpose of allowing access to the Authority's information system, including the web portal, for the purpose of successfully executing data transmissions or otherwise carrying out the express terms of a trading partner agreement or provider enrollment agreement and these rules.

(31) "Personal Identification Number (PIN)" means the alpha-numeric codes assigned to web portal submitters by the Authority for the purpose of allowing access to the Authority's information system, including the web portal, for the purpose of successfully executing DDE, data transmissions, or otherwise carrying out the express terms of a trading partner agreement, provider enrollment agreement, and these rules.

(32) "Prepaid Health Plan (PHP) or Plan" means a managed health care, dental care, chemical dependency, physician care organization, or mental health care organization that contracts with the Authority on a case managed, prepaid, capitated basis under the Oregon Health Plan (OHP).

(33) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies or provides for the supply of services, goods or supplies to covered individuals pursuant to a contract, including but not limited to a provider enrollment agreement with the Authority. A provider does not include billing providers as used in the Division of Medical Assistance (DMAP) general rules but does include non-healthcare providers such as foster care homes. DMAP billing providers are defined in these rules as agents, except for DMAP billing providers that are clinics.

(34) "Provider Enrollment Agreement" means an agreement between the Authority and a provider for payment for the provision of covered services to covered individuals.

(35) "Registered Transaction" means each type of EDI transaction applicable to a trading partner that must be registered with the Authority before it can be tested or approved for EDI transmission.

(36) "Security Access Codes" means the access code assigned by the Authority to the web portal submitter or EDI submitter for the purpose of allowing access to the Authority's information system, including the web portal, to execute data transmissions or otherwise carry out the express terms of a trading partner agreement, provider enrollment agreement, and these rules. Security access codes may include passwords, PINs, or other codes. For password standards, refer to the Authority's ISPO best practice: http://www.dhs.state.or.us/policy/admin/security/090_002.htm.

(37) "Source Documents" means documents or electronic files containing underlying data which is or may be required as part of a data transmission with respect to a claim for payment of charges for medical services or supplies provided to a covered individual, or with respect to any other transaction. Examples of data contained within a specific source document include but are not limited to an individual's name and identification number, claim number, diagnosis code for the services provided, dates of service, service procedure description, applicable charges for the services provided, and a provider's, CCOs, PHP's, clinic's, or allied agency's name, identification number, and signature.

(38) "Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

- (a) Classification of components;
- (b) Specification of materials, performance, or operations; or
- (c) Delineation of procedures.

(39) "Standards for Electronic Transactions" mean a transaction that complies with the applicable standard adopted by DHHS to implement standards for electronic transactions.

(40) "Submitter" means a provider, CCO, PHP, clinic, or allied agency that may or may not have entered into a Trading Partner Agreement depending upon whether the need is to exchange Electronic Data Transactions or access the Authority's Web Portal.

(41) "Transaction" means the exchange of data between the Authority and a provider using web portal access or a trading partner using electronic media to carry out financial or administrative activities.

(42) "Trade Data Log" means the complete written summary of data and data transmissions exchanged between the Authority and an EDI submitter during the period of time a trading partner agreement is in effect and includes but is not limited to sender and receiver information, date and time of transmission, and the general nature of the transmission.

(43) "Trading Partner" means a provider, CCO, PHP, clinic, or allied agency that has entered into a trading partner agreement with the Authority

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in order to satisfy all or part of its obligations under a contract by means of EDI, ERA, or EMC, or any other mutually agreed means of electronic exchange or transfer of data.

(44) "Trading Partner Agreement (TPA)" means a specific written request by a provider, CCO, 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, CCO, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(45) "User" means any individual or entity authorized by the Authority to access network and information systems or information assets.

(46) "User Identification Security (UIS)" means a control method required by the Authority to ensure that only authorized users gain access to specified information assets. One method of control is the use of passwords and PINs with unique user identifications.

(47) "Web Portal" means a site on the World Wide Web that provides secure access with personalized capabilities to its visitors and a pathway to other content designed for use with the Authority specific DDE applications.

(48) "Web Portal Submitter" means an individual or entity authorized to establish an electronic media connection with the Authority to conduct a DDE transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0110

Purpose

(1) These rules establish requirements applicable to providers, CCOs, PHPs, and allied agencies that want to conduct electronic data transactions with the Authority. These rules govern the conduct of all web portal or EDI transactions with the Authority. These rules only apply to services or items that are paid for by the Authority. If the service or item is paid for by a plan or an allied agency, these rules do not apply.

(2) These rules establish the Authority's electronic data transaction requirements for purposes of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, Public Law 104-191, sec. 262 and sec. 264, and the implementing standards for electronic transactions rules. Where a federal HIPAA standard has been adopted for an electronic data transaction, this rule implements and does not alter the federal standard.

(3) These rules establish procedures that must be followed by any provider, CCO, PHP, or allied agency in the event of a security or privacy incident, regardless of whether the incident is related to the use of an electronic data transaction.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0112

Scope and Sequence of Electronic Data Transmission Rules

(1) The Authority communicates with and receives communications from its providers, CCOs, PHPs, and allied agencies using a variety of methods appropriate to the services being provided, the nature of the entity providing the services, and constantly changing technology. These rules describe some of the basic ways that the Authority will exchange data electronically. Additional details may be provided in the Authority's access control rules, provider-specific rules, or the applicable contract documents.

(2) Access to eligibility information about covered individuals may occur using one or more of the following methods:

- (a) Automated voice response, via a telephone;
- (b) Web portal access;
- (c) EDI submitter access; or
- (d) Point of sale (POS) for pharmacy providers.

(3) Claims for which the Authority is responsible for payment or encounter submissions made to the Authority may occur using one or more of the following methods:

- (a) Paper, using the form specified in the provider specific rules and supplemental billing guidance. Providers may submit paper claims, except that pharmacy providers are required to use the POS process for claims submission, and CCOs and PHPs must use the 837 electronic formats;
- (b) Web portal access;
- (c) EDI submitter access; or
- (d) POS for pharmacy providers.

(4) Authority informational updates, provider record updates, depository for CCO or PHP reports, or EDT as specified by the Authority for contract compliance.

(5) Other Authority network and information system access is governed by specific program requirements, which may include but is not limited to IUP access. Affected providers, CCOs, PHPs, and allied agencies shall be separately instructed about the access and requirements. Incidents are subject to these rules.

(6) Providers and allied agencies that continue to use only paper formats for claims transactions are only subject to the confidentiality and security rule, OAR 943-120-0170.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0114

Provider Enrollment Agreement

(1) When a provider applies to enroll, the application form will include information about how to participate in the web portal for use of DDE and automated voice response (AVR) inquiries. The enrollment agreement shall include a section describing the process that will permit the provider, once enrolled, to participate in DDE over the Internet using the secure Authority web portal. This does not include providers enrolled through the use of the DMAP 3108 Managed Care Plan and FFS Non Paid Provider Application. CCOs and PHPs shall receive the information described in this rule, along with PINs and other information required for access.

(2) When the provider number is issued by the Authority, the provider will also receive two PINs: one that may be used to access the web portal and one that may be used for AVR.

(a) If the PINs are not activated within 60 days of issuance, the Authority will initiate a process to inactivate the PIN. If the provider wants to use PIN-based access to the web portal or AVR after deactivation, the provider must submit an update form to obtain another PIN.

(b) Activating the PIN will require Internet access and the provider must supply security data that will be associated with the use of the PIN.

(c) Providers, CCOs, and PHPs using the PIN must protect the confidentiality and security of the PIN pursuant to OAR 943-120-0170.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0116

Web Portal Submitter

(1) Any provider, CCO, or PHP activating their web portal access for web portal submission may be a web portal submitter. The provider will be referred to as the web portal submitter when functioning in that capacity, and shall be required to comply with these rules governing web portal submitters.

(2) The authorized signer of the provider enrollment agreement shall be the individual who is responsible for the provider's, CCO's, or PHP's DDE claims submission process.

(a) If a provider, CCO, or PHP submits their own claims directly, the provider, CCO, or PHP will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules.

(b) If a provider, CCO, or PHP uses an agent or clinic to submit DDE claims using the Authority's web portal, the agent or clinic will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0118

Conduct of Direct Data Entry Using Web Portal

(1) The web portal submitter is responsible for the conduct of the DDE transactions submitted on behalf of the provider, CCO, or PHP, as follows:

(a) The web portal submitter must take reasonable care to ensure that data and DDE transmissions are timely, complete, accurate, and secure, and must take reasonable precautions to prevent unauthorized access to the information system or the DDE transmission. The Authority may not correct or modify an incorrect DDE transaction prior to processing. The trans-

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actions may be rejected and the web portal submitter shall be notified of the rejection.

(b) The web portal submitter and the Authority must bear their own information system costs. The web portal submitter must, at their own expense, obtain access to Internet service that is compatible with and has the capacity for secure access to the Authority's web portal. Web portal submitters must pay their own costs for all charges, including but not limited to charges for equipment, software and services, Internet connection and use time, terminals, connections, telephones, and modems. The Authority is not responsible for providing technical assistance for access to or use of Internet web portal services or the processing of a DDE transaction.

(c) The web portal submitter must send and receive all data transactions in the Authority's approved format. Any attempt to modify or alter the DDE transaction format may result in denial of web portal access.

(d) Re-submissions. The web portal submitter must maintain source documents and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by federal or state law, or by contractual agreement. Back ups, archives, or related files are subject to the terms of these rules to the same extent as the original data transmission.

(2) To protect security and confidentiality, web portal submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data or data transmissions, except as permitted by these rules or the contract, or use the same for any purpose other than that which the web portal submitter was specifically given access and authorization by the Authority or the provider.

(b) Refrain from obtaining access by any means to any data or the Authority's network and information system for any purpose other than that which the web portal submitter has received express authorization to receive access. If the web portal submitter receives data or data transmissions from the Authority which are clearly not intended for the receipt of web portal submitter, the web portal submitter will immediately notify the Authority and make arrangements to return or re-transmit the data or data transmission to the Authority. After re-transmission, the web portal submitter must immediately delete the data contained in the data transmission from its information system.

(c) Install necessary security precautions to ensure the security of the DDE transmission or records relating to the information system of either the Authority or the web portal submitter when the information system is not in active use by the web portal submitter.

(d) Protect and maintain, at all times, the confidentiality of security access codes issued by the Authority. Security access codes are strictly confidential and specifically subject, without limitation, to all of the restrictions in OAR 943-120-0170. The Authority may change the designated security access codes at any time and in any manner as the Authority in its sole discretion considers necessary.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 413.042 & 414.065

Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0120

Registration Process — EDI Transactions

(1) The EDI transaction process is preferred by providers, CCOs, PHPs, and allied agencies for conducting batch or real time transactions, rather than the individual data entry process used for DDE. EDI registration is an administrative process governed by these rules. The EDI registration process begins with the submission of a TPA by a provider, CCO, PHP, clinic, or allied agency, including all requirements and documentation required by these rules.

(2) Trading partners must be Authority providers, CCOs, PHPs, clinics, or allied agencies with a current Authority contract. The Authority will not accept a TPA from individuals or entities who do not have a current contract with the Authority; however, the Authority shall accept a TPA from entities that have been provisionally certified to become CCOs in order to facilitate testing, pending contract signing.

(a) The Authority may receive and hold the TPA for individuals or entities that have submitted a provider enrollment agreement or other pending contract, subject to the satisfactory execution of the pending document.

(b) Termination, revocation, suspension, or expiration of the contract will result in the concurrent termination, revocation, suspension, or expiration of the TPA without any additional notice; except that the TPA will remain in effect to the extent necessary for a trading partner or the Authority to complete obligations involving EDI under the contract for dates of service when the contract was in effect. Contracts that are period-

ically renewed or extended do not require renewal or extension of the TPA unless there is a lapse of time between contracts.

(c) Failure to identify a current Authority contract during the registration process shall result in a rejection of the TPA. The Authority shall verify that the contract numbers identified by a provider, CCO, PHP, clinic, or allied agency are current contracts.

(d) If contract number or contract status changes, the trading partner must provide the Authority with updated information within five business days of the change in contract status. If the Authority determines that a valid contract no longer exists, the Authority shall discontinue EDI transactions applicable for any time period in which the contract no longer exists; except that the TPA will remain in effect to the extent necessary for the trading partner or the Authority to complete obligations involving EDI under the contract for dates of service when the contract was in effect.

(3) To register as a trading partner with the Authority, a provider, CCO, PHP, clinic, or allied agency must submit a signed TPA to the Authority.

(4) In addition to the requirements of section (3) of this rule, a trading partner must submit an application for authorization to the Authority. The application provides specific identification and legal authorization from the trading partner for an EDI submitter to conduct EDI transactions on behalf of a trading partner.

(5) A trading partner may use agents to facilitate the electronic transmission of data. If a trading partner will be using an agent as an EDI submitter, the application for authorization required under section (4) of this rule must identify and authorize an EDI submitter and must include the EDI certification signed by an EDI submitter before the Authority may accept electronic submission from or send electronic transmission to an EDI submitter.

(6) In addition to the requirements of section (3) of this rule, a trading partner must also submit its EDI registration form. This form requires the trading partner or its authorized EDI submitter to register an EDI submitter and the name and type of EDI transaction they are prepared to conduct. Signature of the trading partner or authorized EDI submitter is required on the EDI registration form. The registration form will also permit the trading partner to identify the individuals or EDI submitters who are authorized to submit or receive EDI registered transactions.

(7) The Authority shall review the documentation provided to determine compliance with sections (1) through (6) of this rule. The Authority may verify the documentation. When the Authority determines that the information complies with these rules, the Authority shall notify the trading partner and EDI submitter by email about any testing or other requirements applicable to place the registered transaction into a production environment.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 413.042 & 414.065

Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0170

Security

(1) Individually Identifiable Health Information. All providers, CCOs, PHPs, and allied agencies are responsible for ensuring the security of individually identifiable health information, consistent with the requirements of the privacy statutes and regulations, and shall take reasonable action to prevent any unauthorized disclosure of confidential information by a provider, CCO, PHP, allied agency, or other agent. A provider, web portal submitter, trading partner, EDI submitter, or other agent must comply with any and all applicable privacy statutes and regulations relating to confidential information.

(2) General Requirements for Electronic Submitters. A provider (web portal submitter), trading partner (EDI submitter), or other agent must maintain adequate security procedures to prevent unauthorized access to data, data transmissions, security access codes, or the Authority's information system, and must immediately notify the Authority of all unauthorized attempts by any individual or entity to obtain access to or otherwise tamper with the data, data transmissions, security access codes, or the Authority's information system.

(3) Notice of Unauthorized Disclosures. All providers, CCOs, PHPs, and allied agencies must promptly notify the Authority of all unlawful or unauthorized disclosures of confidential information that come to its agents' attention pursuant to the Authority's ISPO policy: http://www.dhs.state.or.us/policy/admin/security/090_005.pdf, and shall cooperate with the Authority if corrective action is required by the Authority. The Authority shall promptly notify a provider, CCO, PHP, or allied agency of all unlawful or unauthorized disclosures of confidential

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information in relation to a provider, CCO, PHP, or allied agency that come to the Authority's or its agents' attention, and will cooperate with a provider, PHP, or allied agency if corrective action is required.

(4) Wrongful use of the web portal, EDI systems, or the Authority's network and information system, or wrongful use or disclosure of confidential information by a provider, CCO, PHP, allied agency, electronic submitters, or their agents may result in the immediate suspension or revocation of any access granted under these rules or other Authority rules, at the sole discretion of the Authority.

(5) A provider, allied agency, CCO, PHP, or electronic submitter must report to the Authority's Information Security Office at dhsinfo.security@state.or.us and to the Authority program contact individual, any privacy or security incidents that compromise, damage, or cause a loss of protection to confidential information, information assets, or the Authority's network and security system. Reports must be made in the following manner:

(a) No later than five business days from the date on which a provider, allied agency, CCO, PHP, or electronic submitter becomes aware of the incident; and

(b) Provide the results of the incident assessment findings and resolution strategies no later than 30 business days after the report is due under section (4)(a).

(6) A provider, allied agency, CCO, PHP, or electronic submitter must comply with the Authority's requests for corrective action concerning a privacy or security incident and with applicable laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0180

Record Retention and Audit

(1) Records Retention. A provider, CCO, PHP, web portal submitter, trading partner, and EDI submitter shall maintain, for a period of no less than seven years from the date of service, complete, accurate, and unaltered copies of all source documents associated with all data transmissions.

(2) EDI Trade Data Log. An EDI submitter must establish and maintain a trade data log that must record all data transmissions taking place between an EDI submitter and the Authority during the term of a TPA. A trading partner and EDI submitter must take necessary and reasonable steps to ensure that the trade data log constitutes a current, truthful, accurate, complete, and unaltered record of all data transmissions between the parties and must be retained by each party for no less than 24 months following the date of the data transmission. The trade data log may be maintained on electronic media or other suitable means provided that, if necessary, the information may be timely retrieved and presented in readable form.

(3) Right to Audit. A provider, CCO or PHP must allow and require any web portal submitter to allow, and a trading partner must allow and require an EDI submitter or other agent to allow access to the Authority, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, or its designees, and DHHS or its designees to audit relevant business records, source documents, data, data transmissions, trade data logs, or information systems of a provider and its web portal submitter, and a trading partner, and its agents, as necessary, to ensure compliance with these rules. A provider must allow and require its web portal submitter to allow, and a trading partner must allow and require an EDI submitter or other agent to allow the Authority, or its designee, access to ensure that adequate security precautions have been made and are implemented to prevent unauthorized disclosure of any data, data transmissions, or other information.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

943-120-0200

Authority System Administration

(1) No individual or entity shall be registered to conduct a web portal or an EDI transaction with the Authority except as authorized under these rules. Eligibility and continued participation as a provider, CCO, PHP, allied agency or web portal submitter in the conduct of DDE transactions, or as a trading partner or EDI submitter in the conduct of registered transactions, is conditioned on the execution and delivery of the documents required in these rules, the continued accuracy of that information consistent with OAR 943-120-0190, and compliance with a requirements of these

rules. Data, including confidential information, governed by these rules may be used for purposes related to treatment, payment, and health care operations and for the administration of programs or services by the Authority.

(2) In addition to the requirements of section (1) of this rule, in order to qualify as a trading partner:

(a) An individual or entity must be a Authority provider, CCO, PHP, clinic, or allied agency pursuant to a current valid contract; and

(b) A provider, CCO, PHP, clinic, or allied agency must have submitted an executed TPA and all related documentation, including the application for authorization that identifies and authorizes an EDI submitter.

(3) In addition to the requirements of section (1) of this rule, in order to qualify as an EDI submitter:

(a) A trading partner must have identified the individual or entity as an authorized EDI submitter in the application for authorization;

(b) If a trading partner identifies itself as an EDI submitter, the application for authorization must include the information required in the "Trading Partner Authorization of EDI Submitter" and the "EDI Submitter Information"; and

(c) If a trading partner uses an agent as an EDI submitter, the application for authorization must include the information described in section (3)(b) and the signed EDI submitter certification.

(4) The EDI registration process described in these rules provides the Authority with essential profile information that the Authority may use to confirm that a trading partner or EDI submitter is not otherwise excluded or disqualified from submitting EDI transactions to the Authority.

(5) Nothing in these rules or a TPA prevents the Authority from requesting additional information from a trading partner or an EDI submitter to determine their qualifications or eligibility for registration as a trading partner or EDI submitter.

(6) The Authority shall deny a request for registration as a trading partner or for authorization of an EDI submitter or an EDI registration if it finds any of the following:

(a) A trading partner or EDI submitter has substantially failed to comply with the applicable administrative rules or laws;

(b) A trading partner or EDI submitter has been convicted of (or entered a plea of nolo contendere) a felony or misdemeanor related to a crime or violation of federal or state public assistance laws or privacy statutes or regulations;

(c) A trading partner or EDI submitter is excluded from participation in the Medicare program, as determined by the DHHS secretary; or

(d) A trading partner or EDI submitter fails to meet the qualifications as a trading partner or EDI submitter.

(7) Failure to comply with these rules, trading partner agreement, or EDI submitter certification or failure to provide accurate information on an application or certification may also result in sanctions and payment recovery pursuant to applicable Authority program contracts or rules.

(8) For providers using the DDE submission system by the Authority web portal, failure to comply with the terms of these rules, a web portal registration form, or failure to provide accurate information on the registration form may result in sanctions or payment recovery pursuant to the applicable Authority program contracts or rules.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 413.042 & 414.065
Hist.: OHA 13-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 26-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 4-2012(Temp), f. & cert. ef. 7-12-12 thru 1-6-13

Oregon Health Authority, Addictions and Mental Health Division: Addiction Services Chapter 415

Rule Caption: Health Professionals' Services Program.

Adm. Order No.: ADS 3-2012

Filed with Sec. of State: 6-27-2012

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Rules Amended: 415-065-0010, 415-065-0020, 415-065-0030, 415-065-0035, 415-065-0040, 415-065-0050, 415-065-0055, 415-065-0060

Rules Repealed: 415-065-0070

Subject: The purpose of these rules is to establish a consolidated, statewide Health Professionals' monitoring program for licensees of participating health licensing boards, as required by ORS 676.190, who are unable to practice with professional skill and safety due to

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substance use disorders, mental health disorders or both types of disorders. The program shall provide non-treatment compliance monitoring and reporting services.

Rules Coordinator: Nola Russell—(503) 945-7652

415-065-0010

Definitions

The following terms mean:

(1) “Admitted to the hospital for mental illness” for purposes of ORS 676.190 means admitted to the hospital for treatment of a mental health disorder that gives rise to concerns about the licensee’s ability or willingness to participate in the program. Admission for evaluation or diagnosis does not constitute being admitted to the hospital for mental illness.

(2) “Assessment or evaluation” means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.

(3) “Authority” means the Oregon Health Authority.

(4) “Board” means a health professional regulatory board as defined in ORS 676.160 or the Oregon Health Licensing Agency for a board, council or program listed in 676.606.

(5) “Business day” means Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, except legal holidays as defined in ORS 187.010 or 187.020.

(6) “Comply Continuously” means to have been:

(a) Enrolled in the program for at least two uninterrupted years without any reports of substantial noncompliance involving significant violations of the monitoring agreement and

(b) Deemed by the contractor if self-referred, or by the licensee’s board if board referred, to have otherwise successfully complied with all terms of the monitoring agreement.

(7) “Contractor” means the entity that has contracted with the Division to conduct the program.

(8) “Diagnosis” means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment and is the medically appropriate reason for services.

(9) “Division” means the Oregon Health Authority, Addictions and Mental Health Division.

(10) “DSM” means the Diagnostic and Statistical Manual of Mental Disorders-IV-R, published by the American Psychiatric Association.

(11) “Family” means any natural, formal, or informal support persons identified as important by the licensee.

(12) “Federal regulations” means:

(a) As used in ORS 676.190(1)(f)(D), a “positive toxicology test result as determined by federal regulations pertaining to drug testing” means test results meet or exceed the cutoff concentrations shown in 49 CFR § 40.87 (2009) for the substances listed there.

(b) As used in ORS 676.190(4)(i), requiring a “licensee to submit to random drug or alcohol testing in accordance with federal regulations” means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees’ unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee shall have an equal chance of being tested each time selections are made, as described in 49 CFR § 199.105(c)(5)(2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 49 CFR § 199.105(c)(7)(2009).

(13) “Fitness to practice evaluation” means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee’s health practice.

(14) “Independent third-party evaluator” means an individual who is approved by a licensee’s board to evaluate, diagnose, and offer treatment options for substance use disorders, mental health disorders, or co-occurring disorders.

(15) “Individual service record” means the official permanent program documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the program to demonstrate compliance with these rules

(16) “Licensee” means a health professional who is licensed or certified by or registered with a board and the professional is receiving services in the program under these rules.

(17) “Mental health disorder” means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly

increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. “Mental health disorder” includes gambling disorders.

(18) “Monitoring agreement” means an individualized agreement between a licensee and the contractor that meets the requirements for a diversion agreement set by ORS 676.190.

(19) “Non-treatment compliance monitoring” means the non-medical, non-therapeutic services employed by the contractor to track and report the licensee’s compliance with the monitoring agreement.

(20) “Peer” means another licensee currently enrolled in the program.

(21) “Provisional enrollment” means temporary enrollment, pending verification that a self-referred licensee meets all program eligibility criteria.

(22) “Self-referred licensee” means a licensee who seeks to participate in the program without a referral from the board.

(23) “Substance Use Disorders” means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder and other disorders, as defined in DSM criteria.

(24) “Substantial non-compliance” means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee’s ability or willingness to participate in the program. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(25) “Successful completion” means that for the period of service deemed necessary by the contractor or by the licensee’s board by rule, the licensee has complied with the licensee’s monitoring agreement to the satisfaction of the program, and has met the terms of the fee agreement between the program and the licensee.

(26) “Toxicology testing” means urine testing or alternative chemical monitoring including but not limited to blood, saliva, hair or breath.

(27) “Treatment” means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 3-2011, f. & cert. ef. 8-16-11; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0020

Audits

(1) The Division shall arrange for an independent third-party to audit the program and to ensure compliance with the program guidelines.

(2) The Division shall report the results of the audit to the Legislative Assembly, the Governor, and the boards.

(3) The Division’s report may not contain individually identifiable information about the licensees.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0030

Administration Fee

(1) Each board that participates in the program shall pay the Division a fee for participating in the program.

(2) The Division shall calculate the total fee based on all the contractor costs and administration expenses, including but not limited to, Division personnel costs and ancillary expenses, and fees paid to the contractor and auditor.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0035

Board Referrals

(1) A board that refers a licensee to the program must make the referral in writing. The referral must include:

(a) A copy of a report from an independent third-party evaluator who diagnosed the licensee with a substance use disorder, a mental health disorder or both types of disorder, stating the diagnosis and the applicable diagnostic code from the DSM;

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(b) The treatment options developed by the independent third-party evaluator;

(c) A statement that the board has investigated the licensee's professional practice and has determined whether the licensee's professional practice, while impaired, presents or has presented a danger to the public;

(d) A description of any restrictions imposed by the board or recommended by the board on the licensee's professional practice;

(e) A statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted; and

(f) A written statement from the licensee agreeing to enter the program and agreeing to abide by all terms and conditions established by the contractor.

(2) A board-referred licensee is enrolled in the program effective on the date the contractor receives the licensee's signed consents and the monitoring agreement including payment of fees as required by ORS 676.190.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0040

Self-Referrals

(1) Provisional Enrollment. To be provisionally enrolled in the program, a self-referred licensee must:

(a) Sign a written consent allowing disclosure and exchange of information between the contractor, the licensee's employer, independent third-party evaluators, and treatment providers;

(b) Sign a written consent allowing disclosure and exchange of information between the contractor, the board, the licensee's employer, independent third-party evaluators and treatment providers in the event the contractor determines the licensee to be in substantial noncompliance with his or her monitoring agreement. The purpose of the disclosure is to permit the contractor to notify the board if the contractor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;

(c) Sign a written statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the contractor within three business days after the licensee is arrested or convicted;

(d) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her board; and

(e) Agree to and sign a monitoring agreement.

(2) Enrollment: To move from provisional enrollment to enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the contractor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the contractor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and

(c) Enter into an amended monitoring agreement, if required by the contractor.

(3) Once a contractor provisionally enrolls a self-referred licensee in the program failure to complete enrollment may constitute substantial non-compliance and may be reported to the board.

(4) The program may not report a self-referred licensee's enrollment in or successful completion of the program to the licensee's board.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0050

Unique Identification Number

(1) The contractor shall assign a unique licensee identification number to each licensee the contractor enrolls in the program:

(a) The contractor and the Division shall use the same number and shall include the number in any communications or data exchanges involving the licensee;

(b) The contractor shall not assign the identification number to any other licensee enrolled in the program;

(c) The contractor shall retire the number when the licensee is no longer enrolled in the program; and

(d) The contractor shall reassign the number to the licensee if the contractor reenrolls the licensee at a later date.

(2) The contractor may not use all or a portion of a licensee's social security number as the unique identification number.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0055

Program Requirements

The contractor shall:

(1) Inform the licensee about the program services, requirements, benefits, risks, and confidentiality limitations and ensure that the licensee has signed a consent for services. The consent for services explains:

(a) Information the contractor will give to the board and under what circumstances;

(b) That the board may take action to suspend, restrict, modify, or revoke the licensee's license or end the licensee's participation in the program based on information from the contractor.

(2) Enter into a monitoring agreement with the licensee;

(3) Assess the licensee's compliance with his or her monitoring agreement;

(4) Assess the ability of the licensee's employer, when an employer exists to supervise the licensee, and require the employer to establish minimum training requirements for the licensee's supervisor;

(5) Report the licensee's substantial noncompliance with his or her monitoring agreement to a noncompliant licensee's board within one business day after the contractor learns of any substantial noncompliance; and

(6) At least weekly, submit to licensees' boards:

(a) A list of licensees who were referred to the program by the health profession licensing board and who are enrolled in the program; and

(b) A list of licensees who were referred to the program by the health profession licensing board and who successfully completed the program.

(7) The lists submitted under section 6(a)(b) are exempt from disclosure as a public record under ORS 192.140 to 192.505.

(8) Seek a court order authorizing the contractor to release identifying information to a licensee's board, including a report of substantial non-compliance as is described in OAR 415-065-0060, if a self-referred licensee enrolled in the program, or a provisionally enrolled licensee with a qualifying diagnosis, revokes his or her consent to report substantial non-compliance to the licensee's board.

(a) The contractor shall file documents with the court seeking a court order as soon as possible but no later than three business days from the date it was notified that the licensee revoked consent to report substantial non-compliance.

(b) The contractor shall comply with 42 USC & 290dd-2(b)(2); 42 CFR Part 2; the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191, 45 CFR Parts 160, 162 and 164 and ORS 179.505, 192.518-192.524 in seeking such a court order.

(c) The contractor shall disclose to the licensee's board, within one (1) business day, any information the court authorizes it to disclose.

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 1-2011(Temp), f. & cert. ef. 2-11-11 thru 8-5-11; ADS 3-2011, f. & cert. ef. 8-16-11; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

415-065-0060

Reports of Substantial Noncompliance

(1) Unless otherwise prohibited by law, when the contractor reports a licensee's substantial noncompliance to a licensee's board, the report shall include:

(a) A description of the noncompliance;

(b) A copy of the report from the independent third-party evaluator who diagnosed the licensee stating the licensee's diagnosis;

(c) A copy of the licensee's monitoring agreement; and

(d) The licensee's practice or employment status.

(2) The contractor may report substantial noncompliance directly to the licensee's board.

(3) The contractor and the licensee's board may also exchange information in the absence of substantial noncompliance, consistent with the licensee's consent to disclose information.

(4) A positive toxicology result as determined by 49 CFR § 40.87 (2009) must be reported as substantial non-compliance, but positive toxicology results for other drugs and for alcohol may also constitute and may be reported as substantial non-compliance

Stat. Auth.: ORS 413.042 & 676.190

Stats. Implemented: ORS 676.185 - 676.200

Hist.: ADS 3-2010, f. & cert. ef. 7-1-10; ADS 2-2012, f. & cert. ef. 2-9-12; ADS 3-2012, f. 6-27-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

Oregon Health Authority,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309

Rule Caption: Oregon State Hospital Review Panel.

Adm. Order No.: MHS 9-2012

Filed with Sec. of State: 6-19-2012

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Rules Adopted: 309-092-0000, 309-092-0005, 309-092-0010, 309-092-0015, 309-092-0020, 309-092-0025, 309-092-0030, 309-092-0035, 309-092-0040, 309-092-0045, 309-092-0050, 309-092-0055, 309-092-0060, 309-092-0065, 309-092-0070, 309-092-0075, 309-092-0080, 309-092-0085, 309-092-0090, 309-092-0095, 309-092-0100, 309-092-0105, 309-092-0110, 309-092-0115, 309-092-0120, 309-092-0125, 309-092-0130, 309-092-0135, 309-092-0140, 309-092-0145, 309-092-0150, 309-092-0155, 309-092-0160, 309-092-0165, 309-092-0170, 309-092-0175, 309-092-0178, 309-092-0180, 309-092-0185, 309-092-0190, 309-092-0195, 309-092-0200, 309-092-0205, 309-092-0210, 309-092-0215, 309-092-0220, 309-092-0225, 309-092-0230, 309-092-0235, 309-092-0240

Rules Repealed: 309-092-0000(T), 309-092-0005(T), 309-092-0010(T), 309-092-0015(T), 309-092-0020(T), 309-092-0025(T), 309-092-0030(T), 309-092-0035(T), 309-092-0040(T), 309-092-0045(T), 309-092-0050(T), 309-092-0055(T), 309-092-0060(T), 309-092-0065(T), 309-092-0070(T), 309-092-0075(T), 309-092-0080(T), 309-092-0085(T), 309-092-0090(T), 309-092-0095(T), 309-092-0100(T), 309-092-0105(T), 309-092-0110(T), 309-092-0115(T), 309-092-0120(T), 309-092-0125(T), 309-092-0130(T), 309-092-0135(T), 309-092-0140(T), 309-092-0145(T), 309-092-0150(T), 309-092-0155(T), 309-092-0160(T), 309-092-0165(T), 309-092-0170(T), 309-092-0175(T), 309-092-0180(T), 309-092-0185(T), 309-092-0190(T), 309-092-0195(T), 309-092-0200(T), 309-092-0205(T), 309-092-0210(T), 309-092-0215(T), 309-092-0220(T), 309-092-0225(T), 309-092-0230(T), 309-092-0235(T), 309-092-0240(T)

Subject: These rules implement Oregon Laws 2011, chapter 708, Senate Bill 420 (SB 420). The rules create two tiers of offenders who are found guilty except for insanity. Under SB 420, tier one offenders (i.e., Measure 11 offenders) remain exclusively under the jurisdiction of the Psychiatric Security Review Board (PSRB), but the Oregon Health Authority (OHA) acquires jurisdiction over tier two offenders (i.e., non-Measure 11 offenders). Via these rules OHA establishes the Oregon Health Authority Review Panel and the processes applicable to the Review Panel.

Rules Coordinator: Nola Russell—(503) 945-7652

309-092-0000

Purpose and Scope

Oregon Laws 2011, chapter 708, Senate Bill 420 (SB 420) went into effect on January 1, 2012. The law created two tiers of offenders who are found guilty except for insanity and are affected by a mental disease or defect presenting a substantial danger to others. Under SB 420, tier one offenders (i.e., Measure 11 offenders) remain exclusively under the jurisdiction of the Psychiatric Security Review Board (PSRB), but the Oregon Health Authority (OHA) acquires jurisdiction over tier two offenders (i.e., non-Measure 11 offenders) while they are in the Oregon State Hospital. OHA is responsible for determining when tier two offenders may be conditionally released or discharged into the community. As with the PSRB, OHA must have as its primary concern the protection of society. In order to implement SB 420, via these rules OHA establishes the Oregon State Hospital Review Panel (SHRP) and the processes applicable to the SHRP.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0005

Definitions

(1) "Administrative Hearing" means a meeting of the SHRP where a quorum is present and a conditional release plan is reviewed or reviewed and modified.

(2) "Administrative Meeting" means any meeting of the SHRP where a quorum is present for the purpose of considering matters relating to SHRP policy and administration.

(3) "Authority" means the Oregon Health Authority.

(4) "Conditional Release" means a grant by the court, PSRB or SHRP for an individual to reside outside a state hospital in the community under conditions for monitoring and treatment of mental and physical health.

(5) "Director" means the Director of the Authority.

(6) "Division" means the Addictions and Mental Health (AMH) Division of the Authority.

(7) "Hospital Pass" means any time an individual will be off hospital grounds for any length of time not accompanied by hospital staff.

(8) "Individual" means any person under the jurisdiction of the SHRP.

(9) "Insanity Defense" means the following: For offenses committed on or after January 1, 1984, an individual is guilty except for insanity if, as a result of a mental disease or defect at the time of engaging in criminal conduct, the individual lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was "not responsible due to mental disease or defect." From January 1, 1971, through December 31, 1977, the insanity defense was known as "not guilty by reason of mental disease or defect." The name of the insanity defense prior to 1971 was "not guilty by reason of insanity."

(10) "Mental Disease" means any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association.

(11) "Mental Defect" is defined as mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association. "Mental disease or defect" does not include an abnormality manifested solely by repeated or criminal or otherwise antisocial conduct. For offenses committed on or after January 1, 1984, the term "mental disease or defect" does not include any abnormality constituting solely a personality disorder.

(12) "Proof of Dangerousness" means any evidence regarding whether the individual's mental disease or defect may, with reasonable medical probability, occasionally become active, and when active, render the individual a substantial danger to others.

(13) "PSRB" refers to the Psychiatric Security Review Board.

(14) "Quorum" is the presence of at least three members of the SHRP.

(15) "Review Panel" or "SHRP" refers to the Oregon State Hospital Review Panel established by the Authority.

(16) "Review Panel's Office" and "Review Panel Staff" means the office and staff of the Legal Affairs office at a state hospital.

(17) "SB 420" means ORS Laws 2011, chapter 708, Senate Bill 420 that takes effect on January 1, 2012.

(18) "State Hospital" means a state institution as defined in ORS 179.010 and operated by the Authority.

(19) "Statutory Hearing" is a meeting of the SHRP where a quorum is present and an application is made for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 or as otherwise required by ORS 161.337 to 161.351.

(20) "Substantial Danger to Others" means an individual is a substantial danger to others if the individual is demonstrating or previously has demonstrated intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury.

(21) "Superintendent" means the superintendent of a state hospital.

(22) "Tier One Offender" means an individual who has been found guilty except for insanity of a tier one offense as defined in ORS 161.332 as amended by SB 420.

(23) "Tier Two Offender" means an individual who has been found guilty except for insanity only of offenses that are not tier one offenses.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

ADMINISTRATIVE RULES

309-092-0010

Membership and Terms

(1) The SHRP shall consist of five members appointed by the Director of the Authority. The SHRP shall be composed of a psychiatrist, a psychologist, a member with substantial experience in probation and parole, a member of the general public and a lawyer. If the Director of the Authority determines that it is necessary, the psychiatrist position of the SHRP may be filled by a psychologist.

(2) Members shall initially serve one year terms, but after January 2013 they shall serve overlapping four-year terms commencing on the date of their appointment. Vacancies occurring during a member's term shall be filled immediately by appointment of the Director.

(3) Review Panel Members serve at the discretion of the Director.

(4) Review Panel Members are eligible for reappointment.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0015

Chair; Powers and Duties

(1) In January of each year, the SHRP shall elect — by a majority of Review Panel Members votes — one of its members as chairperson to serve for a one-year term with the possibility of reelection.

(2) The chairperson shall have the powers and duties necessary for the performance of the office. These shall include, but not be limited to:

(a) Presiding at hearings and meetings;

(b) Assigning members to panels and designating an acting chairperson when appropriate; and

(c) Making rulings on procedural matters.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0020

Responsibilities, Function and Purpose of Review Panel

(1) The SHRP shall monitor the mental and physical health and treatment of any individual placed under its jurisdiction as a result of a finding by a court of guilty except for insanity. The SHRP shall have as its primary concern the protection of society. In addition, the SHRP's responsibilities shall include, but not be limited to:

(a) Holding hearings as required by law to determine the appropriate status of individuals under its jurisdiction;

(b) Modifying or terminating conditional release plans while individuals under its jurisdiction are in the hospital;

(c) Maintaining and keeping current medical, social and criminal histories of all individuals under the SHRP's jurisdiction; and

(d) Observing the confidentiality of records as required by law.

(2) The SHRP shall be supported by and the SHRP process and procedures shall be administered by the Legal Affairs Director and Legal Affairs Staff at the state hospital.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0025

Jurisdiction of Individuals Under The SHRP

The SHRP shall have jurisdiction as set forth in ORS Chapter 161 over tier two offenders — while they are in the state hospital — who are adjudged by a court to be guilty except for insanity and presenting a substantial danger to others:

(1) The court must find that the individual would have been guilty of a tier two offense during a criminal episode in the course of which the individual caused physical injury or risk of physical injury to another.

(2) The period of jurisdiction of the SHRP, in addition to time spent under jurisdiction of the PRSB while on conditional release, shall be equal to the maximum sentence the court finds the individual could have received had the person been found guilty.

(3) The SHRP and the PSRB do not consider time spent on unauthorized leave from the custody of the Authority as part of the jurisdictional time.

(4) The SHRP has jurisdiction over all tier two individuals who used the insanity defense successfully and were placed on conditional release or committed to a state mental hospital by the court prior to January 1, 1978. The period of jurisdiction in these cases shall be equal to the maximum sen-

tence the person could have received if found guilty and shall be measured from the date of judgment.

(5) The SHRP shall maintain jurisdiction over individuals who are legally placed under its jurisdiction by any court of the State of Oregon and who are housed in a state hospital.

(6) The Juvenile Psychiatric Security Review Board will have jurisdiction over juveniles found guilty except for insanity.

(7) Upon receipt of verified information of time spent in custody, individuals placed under the SHRP's jurisdiction shall receive credit for:

(a) Time spent in any correctional facility for the offense for which the individual was placed under the SHRP's jurisdiction; and

(b) Time spent in custody of the Authority at a state hospital for determination of the defendant's fitness to proceed or under a detainer for the criminal charges for which the individual ultimately was placed under the SHRP's jurisdiction.

Stat. Auth.: ORS 413.042, 161.327, 161.332, 161.336, 161.346, 161.351, 161.385, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0030

Scheduling Review Panel Hearings and Meetings

(1) The SHRP shall meet at least twice every two months unless the chairperson determines that there is not sufficient business before the SHRP to warrant a meeting at the scheduled time.

(2) The SHRP shall hold administrative meetings as necessary to consider matters relating to SHRP policy and administration.

(3) Public notice shall be given in accordance with the Public Meetings Law.

(4) The SHRP may hold administrative hearings to expedite such matters as approving modifications of conditional release orders, reviewing plans for conditional release and approving or disapproving them.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0035

Quorum and Decisions

(1) The presence of at least three members of the SHRP constitutes a quorum.

(2) Three concurring votes (affirmative or negative) are required to make a SHRP decision.

(3) When three members cannot agree on a decision, the hearing may be continued, for no longer than 60 days. 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 SHRP.

(4) If the attorney for an individual or a pro se individual objects to the remaining member's or members' review as set forth in section (2) of this rule, the SHRP may reschedule the matter for a hearing before the entire SHRP.

(5) If an objection for good cause is made to a specific member of the SHRP sitting on the panel considering a specific case, that member shall withdraw and, if necessary, the hearing shall be postponed and rescheduled.

(6) If an objection for good cause is made to a specific staff member of the SHRP being present during the panel's deliberations in a specific case, and if the SHRP determines that good cause exists, that staff member shall not be present during deliberations in that case.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0040

Public Meetings Law

(1) All meetings of the SHRP are open to the public in accordance with the Public Meetings Law.

(2) Deliberations of the SHRP are not open to the public.

(3) For the purposes of this rule, the term "public" does not include staff of the SHRP.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0045

Records

(1) A record shall be kept of SHRP action taken at an administrative meeting and any decision made at an administrative hearing of the SHRP.

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(2) All SHRP hearings, except SHRP deliberations, shall be recorded by manual or electronic means which can be transcribed. No other record of SHRP hearings shall be made. All documents considered at hearings shall be included as exhibits and kept as part of the record.

(a) Audio recordings capable of being transcribed shall be kept by the SHRP for a minimum period of two years from the hearing date.

(b) SHRP hearings may be transcribed from the recording for appeal purposes. If transcribed, the transcript may be substituted for the original record. ORS 161.348(2) authorizes the SHRP to submit to the appellate court the record of the proceeding or, if the person agrees, a shortened record. The record may include a certified true copy of a tape recording of the proceedings at a hearing.

(c) Any material to which an objection is sustained shall be removed from the record; the objection and ruling of the SHRP shall be noted on the record.

(d) The audio tape or transcript of the proceedings shall be made available at cost to a party to the proceedings upon request.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0050

Public Records Law; Confidentiality

The attorneys for an individual or a pro se individual shall have the right to review any records to be considered at the hearing. Applicable federal and state confidentiality laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and ORS 179.505 shall be observed with respect to other requests to inspect an individual's records.

Stat. Auth.: ORS 413.042, 161.385, 161.387, 192.450, 192.500, 192.525; & 192.690, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0055

Hearing Notices

The SHRP shall provide written notice of SHRP hearings to the following persons or agencies within a reasonable time:

- (1) The individual;
- (2) The attorney representing the individual;
- (3) The District Attorney;
- (4) The community supervisor or case monitor;
- (5) The Court or department of the county from which the individual was committed;

(6) The victim, if the court finds that the victim requests notification;

(7) The victim, if subsequent to the disposition of the criminal case, the victim asks either the PSRB or SHRP for notification.

(8) Any other interested person requesting notification ;

(9) A state hospital unit in which the individual resides; and (10) The PSRB in the case of conditional release hearings.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0060

Information Contained in Notice

Written notice shall contain the following:

- (1) Time, place and location of the hearing;
- (2) The issues to be considered, reference to statutes and rules involved, authority and jurisdiction;

(3) A statement of individual's rights, including the following:

(4) The right to appear at all proceedings, except SHRP deliberations;

(5) The right to cross-examine all witnesses appearing to testify at the hearing;

(6) The right to subpoena witness and documents as provided in ORS 161.395;

(7) The right to legal counsel and, if indigent as defined by the indigency standard set forth by the State Court Administrator's office, to have counsel provided without cost; and

(8) The Right to examine all information, documents and reports under consideration.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.295 - 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0065

Time Frame of Hearings

Hearings shall be held within the following time frames:

(1) The initial hearing under ORS 161.341(6)(a) shall occur within 90 days following the individual's placement under the SHRP's jurisdiction and commitment to a state hospital.

(2) The revocation hearing under ORS 161.336(4)(c) shall occur within 20 days following the individual's return to OSH for violation of the individual's conditional release requirements.

(3) An individual's request for conditional release or discharge under ORS 161.341(3) shall be heard within 60 days of receipt of the request, except for initial requests for conditional release under ORS 161.341(5).

(4) An individual is eligible to request a hearing six months after last hearing, and the hearing must be held within 60 days after filing the request pursuant to ORS 161.341(4).

(5) A request for conditional release by the state hospital, under ORS 161.341(1) may be made at any time and shall be heard within 60 days of receipt of the request.

(6) A request by the outpatient supervisor under ORS 161.336(7)(b) for conditional release, modification of conditional release or discharge may be made at any time and shall be heard within 60 days of receipt of request.

(7) Two-year hearings under ORS 161.341(6)(b) are mandatory for individuals committed to a state hospital when no other hearing has been held within two years.

Stat. Auth.: ORS 413.042 & 161.341, SB 420.

Stats. Implemented: ORS 161.336, 161.341, 161.351, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0070

Chairperson Conducting Hearing

The chairperson or acting chairperson shall preside over hearings and shall have the authority to:

(1) Designate the order of presentation and questioning;

(2) Determine the scope of questioning; and

(3) Set time limits and cut off irrelevant questions and irrelevant or unresponsive answers.

Stat. Auth.: ORS 413.042 & 161, SB 420 .

Stats. Implemented: ORS 161.385, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0075

Patient's Right to Review Record; Exceptions

(1) Individuals shall receive directly, or through their attorney, written notice of the hearing and a statement of their rights in accordance with ORS 161.346.

(2) All exhibits to be considered by the SHRP shall be disclosed to the individual's attorney or the individual if proceeding pro se, as soon as they are available.

(3) Exhibits not available prior to the hearing shall be made available to the individual's attorney or the patient, if not represented, at the hearing.

(4) All material relevant and pertinent to the individual and issues before the SHRP shall be made a part of the record.

(5) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0080

Evidence Considered; Admissibility

The SHRP shall consider all evidence available to it which is material, relevant and reliable. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible, including but not limited to the following:

(1) The record of trial;

(2) Information supplied by the state's attorney or any interested party including the individual;

(3) Information concerning the individual's mental condition;

(4) The entire psychiatric and criminal history of the individual including motor vehicle records;

(5) Psychiatric or psychological reports ordered by the SHRP under ORS 161.346(3);

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(6) Psychiatric and psychological reports under ORS 161.341(2) written by a person chosen by the state or the individual to examine the individual; and

(7) Testimony of witnesses.

Stat. Auth.: ORS 413.042 & 161, SB 420

Stats. Implemented: ORS 161.336, 161.341 & 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0085

Motion Practice

Any party bringing a motion before the SHRP shall submit the motion and memorandum of law to the SHRP and the opposing party one week prior to the hearing date in which the motion will be heard.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0090

Objections to Evidence

The chairperson or acting chairperson shall rule on questions of evidence. Hearsay evidence shall not be excluded unless the chairperson or acting chairperson determines the evidence is not material, relevant or reliable.

(1) In determining whether the evidence is material, relevant or reliable, the SHRP shall consider the following:

(a) The age and source of the documents;

(b) The ability of the witness to have observed and had personal knowledge of the incidents; and

(c) The credibility of the witness and whether the witness has bias or interest in the matter.

(2) The individual, the individual's attorney or attorney representing the state may object to any evidence. The SHRP may decide the following:

(a) To sustain the objection and deny the admission and consideration of the evidence on the grounds that it is not material, relevant or reliable;

(b) To overrule the objection and admit the evidence;

(c) In considering the weight given to that evidence, consider the reason for the objection; or

(d) To grant a continuance for a period of time, not to exceed 60 days, to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.

Stat. Auth.: ORS 413.042 & 161.327, SB 420.

Stats. Implemented: ORS 161.346 & 161.385, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0095

Witnesses and Documents; Subpoena

(1) Witnesses or documents may be subpoenaed as provided in ORS 161.395 upon request of any party to the hearing or on the Review Panel's own motion, upon a proper showing of the general relevance and reasonable scope of the documentary of physical evidence sought.

(2) Witnesses with a subpoena other than parties or state officers or employees shall receive fees and mileage as prescribed by law.

(3) A judge of the Circuit Court of the county in which the hearing is held may compel obedience by proceeding for contempt for failure of any person to comply with the subpoena issued.

Stat. Auth.: ORS 413.042 & 161.387; SB 420

Stats. Implemented: ORS 161.346 & ORS 161.395; SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0100

Testimony Given on Oath

The SHRP shall take testimony of a witness upon oath or affirmation of the witness administered by the chairperson or acting chairperson at the hearing.

Stat. Auth.: ORS 413.042 & 161.327, SB 420.

Stats. Implemented: ORS 161.346 & 161.385, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0105

Standards and Burdens of Proof

(1) The standard of proof on all issues at hearings of the SHRP shall be the preponderance of the evidence. The burden of proof shall depend on the type of hearing:

(a) In an initial 90-day hearing under ORS 161.341(6)(a), the state has the burden to show the individual continues to be affected by a mental disease or defect and continues to be a substantial danger to others.

(b) In a revocation hearing under ORS 161.336(4)(c), the state has the burden to show the individual's unfitness for conditional release and that jurisdiction of the SHRP should continue.

(c) In an individual's request for conditional release or discharge under ORS 161.341(3), the individual has the burden of proving his or her fitness for conditional release or discharge, unless it has been more than two years since the State had the burden of proof. In that case, the burden is on the State.

(d) In a request for conditional release or discharge of the individual by the Authority under ORS 161.341(1), the state must prove the individual is not appropriate for conditional release or discharge.

(e) In a status review hearing under ORS 161.346, the state has the burden of proving that the commitment, proposed conditional release plan or other current status of the patient is appropriate.

(f) In all other cases (such as two, five, and ten-year hearings), the state bears the burden of proof.

(2) If at any hearing state hospital staff agrees with the individual on the issue of mental disease or defect, dangerousness or fitness for conditional release, but no advance notice is given to the SHRP that the hospital requests discharge or conditional release, the burden of proof remains with the individual. The testimony of state hospital staff will be considered as evidence to assist the SHRP in deciding whether the individual has met his/her burden.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, 161.341 & 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0110

Burden of Going Forward

The party that has the burden of proof shall also have the burden of going forward with the evidence (calling and examining witnesses, proposing conditions of release, etc.).

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0115

Continuance of Hearing

Upon the request of any party or on its own motion, the SHRP may for good cause continue a hearing for a reasonable period of time not to exceed 60 days to obtain additional information or testimony.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0120

Cancellation of Hearing

Unless an individual asks for cancellation of a hearing for good cause, in writing, and with four weeks' advance notice, the individual shall not be eligible to request a hearing for six months from the date of the scheduled hearing.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0125

Use of Restraints

(1) The SHRP prefers to have individuals appear at hearings without physical restraints. If, in the judgment of the individual's physician, the individual might need restraining, the SHRP prefers to have staff attending the hearing with the individual rather than use of physical restraints. However, the final decision on use of restraints lies with the physician.

(2) Any attorney objecting to the individual appearing with restraints at the hearing may raise the issue and ask for testimony from the physician.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0130

Decisions of The SHRP

(1) Within 15 days following the conclusion of a hearing, the SHRP shall provide the individual, the attorney representing the individual, the

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district attorney representing the state, the committing court and, where applicable, the Authority and local mental health agency or supervisor written notice of the SHRP's decision.

(2) The order of the SHRP shall be signed by a member present at the hearing.

(3) The SHRP may issue its decision orally on the record at the hearing.

(4) The formal order of the SHRP shall contain the findings of facts, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 161.348.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0135

Notification of Right to Appeal

At the conclusion of a Review Panel hearing, the chair or acting chair shall provide the individual and attorney with written notification advising of the right to appeal on an adverse decision. Within 60 days from the date an order is signed and the right to an attorney if indigent.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0140

Patient Appearing Pro Se

When an individual waives the right to be represented by an attorney, the SHRP shall take written or oral testimony and decide whether the individual is capable of understanding the proceedings.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0145

Issues Before The SHRP

At any hearing before the SHRP, issues considered shall be limited to those relevant to the purposes of the hearing. Notice of intent to raise new issues shall be given to the SHRP in writing prior to the hearing. If new issues are raised, the SHRP may continue the hearing to consider the issues and give the parties an opportunity to submit additional evidence.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0150

Primary Concern: Protection of Society

In determining whether an individual should be conditionally released or discharged, the SHRP shall have as its primary concern the protection of society. The SHRP shall not discharge an individual whose mental disease or defect may, with reasonable medical probability occasionally become active, and when active, render the individual a danger to others.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, 161.341, 161.346, 161.351, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0155

Initial Hearing

After being placed under the jurisdiction of the SHRP and committed to a state hospital, the individual shall have an initial hearing before the SHRP to determine whether the individual should be committed, conditionally released or discharged:

(1) At an initial hearing, the SHRP shall make a finding on the issue of presence of mental disease or defect and dangerousness and may base it on the court's findings and any additional information received.

(2) If the SHRP finds at its initial hearing that the individual is affected by a mental disease or defect, presents a substantial danger to others and is not a proper subject for conditional release, the SHRP shall order the individual committed to a state hospital designated by the Authority.

(3) If the SHRP finds the individual is still affected by a mental disease or defect and is a substantial danger to others but can be adequately controlled with treatment and supervision if conditionally released, the SHRP shall find the individual appropriate for conditional release and shall follow procedures set forth in 309-092-0190.

(4) If the SHRP makes a finding the individual is no longer affected by a mental disease or defect or is no longer a substantial danger to others, the SHRP shall order the discharge of the individual from jurisdiction.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, ORS 161.341 & ORS 161.346; SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0160

Revocation Hearing

(1) Within 20 days following the return of a tier two individual to a state hospital the SHRP shall hold a hearing and consider whether the revocation was appropriate and whether the individual can be continued on conditional release or should be committed to a state hospital.

(2) The SHRP may consider a request for discharge at a revocation hearing or make that finding after considering the evidence before the SHRP.

(3) If the SHRP finds the individual is affected by a mental disease or defect and presents a substantial danger to others and cannot be safely controlled in the community while on conditional release, the individual shall be committed to a state hospital.

(4) If the SHRP finds the individual could be controlled in the community but no conditional release plan has been approved by the SHRP, the SHRP shall order the individual committed to a state hospital but find the individual appropriate for conditional release, and shall order a conditional release plan be created.

(a) The SHRP shall specify what conditions the plan should include.

(b) The SHRP may approve the conditional release plan submitted by the staff of the hospital, by the individual or someone on the individual's behalf, at an administrative hearing.

(c) If the PSRB submits conditions of release, the SHRP must order that those conditions be followed.

(5) If the SHRP finds the individual can be controlled in the community and a verified conditional release plan is approved by the SHRP, the SHRP shall order the individual placed on conditional release.

(6) If the individual has been charged with a new crime or is serving time in the corrections system, the SHRP shall not hold a revocation hearing until such time as jurisdiction of the individual is returned to the Authority or upon an appropriate request to hold a hearing.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0165

Patient Request for Conditional Release

In a hearing before the SHRP on an individual request for conditional release, the SHRP shall consider whether, although still affected by mental disease or defect, the individual can be adequately controlled in the community with treatment and supervision, and shall determine whether the individual is a proper subject for conditional release in accordance with procedures set forth in Division 070.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.341, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0170

Patient Request for Discharge

In a hearing before the SHRP on an individual's request for discharge, the SHRP shall determine whether the individual continues to be affected by a mental disease or defect and is a substantial danger to others:

(1) If the SHRP finds the individual is no longer affected by mental disease or defect or if so affected, no longer presents a substantial danger to others, the individual shall be discharged.

(2) If the SHRP finds the individual is not appropriate for discharge, the SHRP may consider whether the individual is appropriate for conditional release even if not requested previously by the individual.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.341, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0175

Hospital Request for Conditional Release

(1) At any time while an individual is committed to a state hospital the superintendent of the state hospital shall apply to the SHRP for conditional release if it is the opinion of the treating physician that the individual continues to be affected by mental disease or defect and continues to be a

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danger to others but can be controlled in the community with proper care, medication, supervision and treatment.

(2) The application shall be accompanied by an updated report setting forth facts supporting the state hospital staff's opinion and a plan for treatment and supervision in the community which includes observations and facts which support staff recommendations.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.341, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0178

SHRP's Procedure for Conditional Release of Tier Two Offenders

The SHRP has jurisdiction of Tier Two offenders while the individuals are in the Oregon State Hospital. The PSRB has jurisdiction of and supervision over Tier Two offenders conditionally released from the State Hospital. The SHRP is responsible for conducting the hearings for the Authority. To efficiently facilitate the issuance of conditional release orders with conditions provided by the PSRB, the following process will be utilized:

(1) When a Tier Two Offender ("the individual") is committed to the jurisdiction of SHRP, SHRP will send a copy of the commitment order to the PSRB upon receipt.

(2) Throughout the course of the conditional release planning process for Tier Two offenders in the State Hospital, SHRP shall continue to conduct the statutorily required hearings for the individual.

(3) Upon receipt of all of the following documents, SHRP shall forward all of the documents to the PSRB with notice that SHRP intends to conduct a conditional release hearing in order to allow the PSRB to conduct an administrative review as provided in OAR 859-070-0040:

(a) SHRP's order for evaluation of possible conditional release of a Tier Two offender;

(b) The Tier Two offender's current updated SHRP exhibit file;

(c) The evaluation by the proposed community provider;

(d) A summary of conditional release plan form which outlines the proposed conditions; and

(e) A Progress Note Update authored by the treating psychiatrist dated within 30 days of the signed summary of the conditional release plan form.

(4) The SHRP shall set the matter for either a full or administrative hearing for consideration of conditional release no sooner than 30 days after the PSRB has been provided the required documents. This will allow the time necessary for the SHRP to provide the statutorily-required notice to the victims and other interested parties as well as for the PSRB to conduct its review of the proposed conditions of release.

(5) No less than 7 days prior to that hearing date, the SHRP shall provide a copy of the proposed conditions of release to the individual's attorney and the State's attorney at the Department of Justice for review and opportunity to request a full hearing regarding the proposed conditions before issuance of a final order by the SHRP.

(6) If either attorney submits a written request by fax or email for a full hearing, it must be received no less than 48 hours prior to the scheduled hearing date. If no request is received, the SHRP may proceed with an administrative hearing if it chooses.

(7) The SHRP must review the PSRB's report and recommended conditions of release. The SHRP may order the conditional release of the individual, including any applicable conditions, and the transfer of jurisdiction to the PSRB. The SHRP shall issue a final order within 15 days of its hearing.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.341, SB 420

Hist.: MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0180

Hospital or Outpatient Supervisor Request for Discharge

At any time while an individual is committed to a state hospital the superintendent of the state hospital or designee shall apply to the SHRP for discharge if, in the opinion of the hospital physician or outpatient supervisor, the individual is no longer affected by mental disease or defect or, if so affected, the person no longer presents a substantial danger to others. The application shall be accompanied by a report setting forth the facts supporting the opinion.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.341, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0185

Mandatory Two-Year, Five-Year Hearings

(1) The SHRP shall have periodic mandatory hearings for all individuals.

(2) In no case shall an individual be committed and held in a state hospital under the SHRP's jurisdiction for a period of time exceeding two years without a hearing before the SHRP to determine whether the individual should be conditionally released or discharged.

(3) At mandatory two-year hearings, the SHRP shall consider:

(a) Whether the individual continues to be affected by mental disease or defect and whether the individual presents a substantial danger to others; and

(b) If the individual is affected by mental disease or defect and is a substantial danger to others, whether the individual could be adequately controlled if conditionally released.

Stat. Auth.: ORS 413.042 & 161.387; SB 420

Stats. Implemented: ORS 161.341 & ORS 161.351; SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0190

Status Hearing

The SHRP may hold a hearing at any time to review the status of the individual to determine whether a conditional release or discharge order is appropriate.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.336, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0195

Review Panel Order of Conditional Release

(1) In determining whether an order of conditional release is appropriate, the SHRP shall have as its goals the protection of the public, the best interests of justice and the welfare of the individual. The SHRP may consider the testimony and exhibits at the hearing regarding the individual's behavior in the hospital including the individual's progress, insight and responsibility taken for his or her own behavior.

(2) If the SHRP finds the individual may be controlled in the community and a verified conditional release plan is approved by the SHRP, the SHRP may order the individual placed on conditional release.

(3) If the SHRP finds the individual could be controlled in the community but no conditional release plan has been approved by the SHRP, the SHRP may order the individual to remain in a state hospital but find the individual appropriate for conditional release pending submission of a conditional release plan approved by the SHRP.

(a) The SHRP shall specify what conditions the plan should include and may approve the conditional release plan submitted by the staff of the state hospital, by the individual or someone on the individual's behalf at an administrative hearing.

(b) Following the procedures set forth in OAR 309-092-0178, the PSRB may provide the SHRP with conditions of release that the PSRB determines are advisable. If the SHRP orders the individual conditionally released, the SHRP shall include the conditions of release in the order.

(4) If a verified conditional release plan has not been approved and the conditions need further examination and approval by the SHRP, the SHRP may commit the individual, find the individual appropriate for conditional release or continue the hearing.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0200

Elements of Conditional Release Order

(1) The SHRP may consider any or all of the following elements of a conditional release plan and determine which are appropriate and necessary to insure the safety of the public. Following the procedures set forth in OAR 309-092-0178, the PSRB may provide the SHRP with conditions of release that the PSRB determines are advisable. If the SHRP orders the individual conditionally released, the SHRP shall include the conditions of release in the order

(a) Housing must be available for the individual. The SHRP may require 24-hour supervised housing, a supervised group home, foster care, housing with relatives or independent housing.

(b) Mental health treatment must be available in the community. The SHRP-approved provider of the treatment must have had an opportunity to

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evaluate the patient and the proposed conditional release plan and to be heard before the SHRP.

(A) The provider must have agreed to provide the necessary mental health treatment to the individual.

(B) The treatment may include individual counseling, group counseling, home visits, prescription of medication or any other treatment recommended by the provider(s) and approved by the SHRP.

(C) Reporting responsibility: An individual must be available to be designated by the PSRB as having primary reporting responsibility.

(2) Special conditions may be imposed, including but not limited to, the following: no consumption of alcohol, taking of antabuse, observation by designated individual of each ingestion of medication; submitting to drug screen tests; no driving; vocational activities; day treatment; attending school; working; or sex offender assessment and treatment.

(3) Parole and probation supervision may be ordered.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0205

The Authority's Responsibility to Prepare Plan

(1) When a state hospital determines an individual may be ready for conditional release, the state hospital staff may request that the SHRP order an evaluation for community placement.

(2) The Division is responsible for and shall prepare the conditional release plan. In order to carry out the conditional release plan, the Division may contract with a community mental health program, other public agency, or Private Corporation or an individual to provide evaluations for community placement, supervision and treatment.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.336, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0210

Out-of-State Conditional Release Order

The SHRP may consider and approve a conditional release plan to have the individual reside out of state.

Stat. Auth.: ORS 413.042 & 161, SB 420

Stats. Implemented: ORS 161.336, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0215

Reconsideration

(1) A party to the hearing may request reconsideration of a Review Panel finding in writing. Also, on its own motion, the SHRP may reconsider the finding.

(2) If an issue is appropriately raised, the matter shall be remanded to the SHRP for hearing on that issue. Reconsideration may be upheld if:

(a) The written findings are found to be inaccurate or do not support the action taken by the SHRP;

(b) Substantial information material to the issues which was not known or which could not have been known at the time of the hearing is received;

(c) A material misrepresentation of facts or concealment of facts occurred; or

(d) The SHRP decision is contrary to the rules or statutes governing the SHRP.

(3) If the issues are not appropriately raised, the individual shall receive written notification of the reasons for denial of reconsideration.

(4) If good cause exists, a party to the hearing may request reconsideration by the Director. Subject to the Director's discretion and determination of good cause, the Director may reconsider the SHRP's findings by listening to the audio of the hearing and reviewing the exhibits from the hearing. The Director may overrule or sustain the SHRP's findings. The Director may also remand the matter to the SHRP for further consideration.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0220

Judicial Review

(1) The Legislature has provided that a final Review Panel order shall be subject to review by the Court of Appeals upon petition to the court within 60 days of the issuance of the order in accordance with ORS 161.385(8).

(2) The SHRP shall provide the attorney for the individual and the court with the record of proceedings.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.385, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0225

Enforcement of Review Panel Orders

The SHRP may apply to the circuit court of the appropriate county for contempt proceedings under ORS 161.395 when its directive to an agency or person is not followed.

Stat. Auth.: ORS 413.042 & 161.327, SB 420

Stats. Implemented: ORS 161.395, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0230

Compliance

State or local community mental health programs shall comply with any order of the SHRP.

Stat. Auth.: ORS 413.042, 137.540, 161.327, 192.620, 430.630, SB 420

Stats. Implemented: ORS 161.336, 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0235

Custody of An Individual Who is a Substantial Danger to Others

The Legislature has provided that the community mental health program director, the director of the facility providing treatment to an individual on conditional release, any peace officer or any individual responsible for the supervision of the individual on conditional release may take or request that an individual on conditional release be taken into custody if there is reasonable cause to believe the individual is a substantial danger to others because of mental disease or defect and the person is in need of immediate care, custody or treatment. The individual shall be transferred to a state hospital designated by the Authority.

Stat. Auth.: ORS 413.042 & 161.387, SB 420

Stats. Implemented: ORS 161.346, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

309-092-0240

Leaves and Passes

(1) Any overnight or out-of-town leave of absence or pass request for SHRP individuals in a state hospital shall be signed by a physician and submitted to the hospital Risk Review Committee for initial consideration. A leave of absence or pass may be requested when the physician is of the opinion that a leave of absence or pass from the hospital would pose no substantial danger to others and would be therapeutic for the individual.

(2) If the hospital's Risk Review Committee approves the request, the request and recommendation of the Risk Review Committee shall be presented to the SHRP for the purposes of ORS 161.326 (Notice to victim).

Stat. Auth.: ORS 413.042, 137.540, 161.315, 161.327, 161.332, 161.341, 161.346, 161.351, 161.365, 161.370, 161.390, 161.400, 192.690, 428.210, SB 420

Stats. Implemented: ORS 161.400, SB 420

Hist.: MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 9-2012, f. & cert. ef. 6-19-12

Rule Caption: Medicaid Payment for Rehabilitative Mental Health Services.

Adm. Order No.: MHS 10-2012

Filed with Sec. of State: 6-19-2012

Certified to be Effective: 6-19-12

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Rules Amended: 309-016-0600, 309-016-0605, 309-016-0630, 309-016-0675, 309-016-0685, 309-016-0745, 309-016-0750

Rules Repealed: 309-016-0600(T), 309-016-0605(T), 309-016-0610(T), 309-016-0630(T), 309-016-0675(T), 309-016-0685(T), 309-016-0745(T), 309-016-0750(T)

Subject: These rules specify standards for authorized appropriate reimbursement of Medicaid or State Children's Health Plan funded addictions and mental health services and supports. These amendments implement Oregon Laws 2011, Senate Bill 238.

Rules Coordinator: Nola Russell—(503) 945-7652

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309-016-0600

Scope

These rules specify standards for authorized appropriate reimbursement of Medicaid or State Children's Health Plan funded addictions and mental health services and supports. This includes payments for community-based as well as those payments made for acute inpatient services in a general medical setting or a freestanding facility meeting the federal definition as an institute for mental disease reimbursed as a result of a request for payment. The requirements set forth here in OAR 309-016-0600 through 309-016-0755 and referenced rules must be met in order for Medicaid payment to have been made appropriately.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12

309-016-0605

Definitions

(1) "Action" means:

(a) The denial, limitation or restriction of a requested covered service including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service; or

(c) The failure to provide services in a timely manner, as defined by the Addictions and Mental Health Division of the Oregon Health Authority.

(2) "Active Treatment" means a service provided as prescribed in a professionally developed and supervised Individual Services and Supports Plan to address or improve a condition.

(3) "Addictions and Mental Health Division" means the Division of the Oregon Health Authority responsible for the administration of addictions and mental health services provided in Oregon or to its residents.

(4) "Allowable Cost" means the cost of treatment services based on cost finding principles found in the appropriate OMB Circular such as "Cost Principles for Non-Profit Organization" (OMB Circular A-122) or "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87) and including allowable costs incurred for interest on the acquisition of buildings and improvements thereon.

(5) "Appeal" means a request by an Individual or their representative to review an Action as defined in this rule.

(6) "Certificate of Approval" means the document awarded by the Division signifying that a specific, named organization is judged by the Division to operate in compliance with applicable rules. A "Certificate of Approval" for mental health services is valid only when signed by the Division's Director and, in the case of a subcontract provider of a CMHP, the CMHP director.

(7) "Certification of Need" means the procedures established by the Division to certify in writing a child's need for psychiatric residential treatment services.

(8) "Child" or "Children" means a person under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, will be considered a child until age 21 for purposes of these rules.

(9) "Children, Adults and Families" (CAF) means the Division serving as Oregon's child welfare agency.

(10) "Clean Claim(s)" means a claim that can be processed without obtaining additional information from the provider of the service or from a third party. It includes a claim with errors originating in the State's claims system. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity.

(11) "Commission on Accreditation of Rehabilitation" (CARF) means an organization that accredits behavioral health care and community providers based on the current edition of the "CARF Behavioral Health" standards manual.

(12) "Community Mental Health Program" (CMHP) means an entity that is responsible for planning and delivery of services for persons with substance use disorders, mental health diagnosis, or developmental disabilities, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(13) "Complaint" means an expression of dissatisfaction from an Individual or their representative to a Practitioner or Provider about any matter other than an Action.

(14) "Council on Accreditation of Services for Families and Children Facilities" (COA) means an organization that accredits behavioral health care and social service programs based on the current edition of the COA "Standards for Behavioral Health Care Services and Community Support and Education Services Manual."

(15) "Division" means the Addictions and Mental Health Division Of the Oregon Health Authority.

(16) "Director" means the Director of the Division or his or her designee.

(16) "Division of Medical Assistance Programs" (DMAP) means the Division of the Oregon Health Authority 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.

(17) "DMAP/AMH" means the Division of Medical Assistance or Addictions and Mental Health Division. Both DMAP and AMH have delegated responsibilities for the administration of Medicaid funded addictions and mental health services and supports. A lead agency will be identified to each entity involved in any process when the delegation of such is necessary.

(18) "Diagnostic and Statistical Manual" (DSM) means the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(19) "Grievance System" means the overall system in which an Individual can express dissatisfaction and that expression acted on if necessary. The Grievance System includes a Complaint process, and Appeals process and access to the Division of Medical Assistance Programs Administrative Hearing process.

(20) "Individual" means any person being considered for or receiving services and supports.

(21) "Individual Service and Support Plan" (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the desired outcomes of service.

(22) "Interdisciplinary Team" means the group of people designated to advise in the planning and provision of services and supports to individuals receiving Intensive Treatment Services (ITS) and Enhanced Care Services (ECS) and may include multiple disciplines or agencies. For ITS programs, the composition of the interdisciplinary team must be consistent with the requirements of 42 CFR Part 441.156.

(23) "Joint Commission on Accreditation of Healthcare Organizations" (JCAHO) means the Joint Commission on Accreditation of Healthcare Organizations. The Joint Commission accredits psychiatric residential treatment facilities according to its current edition of the "Comprehensive Accreditation Manual for Behavioral Health Care."

(24) "Letter of Approval" means the document awarded to service providers under OAR 309-012-0010 which states that the provider is in compliance with applicable administrative rules of the Division. Letters of Approval issued for mental health services are obsolete upon their expiration date, or upon the effective date of 309-012-0140, whichever is later.

(25) "Licensed Medical Practitioner" (LMP) means a person who meets the following minimum qualifications as documented by the LMHA or designee:

(a) Physician licensed to practice in the State of Oregon; or

(b) Nurse practitioner licensed to practice in the State of Oregon; or

(c) Physician's Assistant licensed to practice in the State of Oregon.

(d) In addition, whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For ICTS and ITS providers, a "Licensed Medical Practitioner" or "LMP" means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(26) "Local Mental Health Authority" (LMHA) means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a Community Mental Health Program (CMHP);

(b) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(27) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to eligible persons, under Title XIX of the Social Security Act.

(28) "Medicaid Management Information System" The mechanized claims processing and information retrieval system that all states are required to have according to section 1903(a)(3) of the Social Security Act and defined in regulation at 42 CFR 433.111. All states operate an MMIS to support Medicaid business functions and maintain information in such areas as provider enrollment; client eligibility, including third party liability.

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ty; benefit package maintenance; managed care enrollment; claims processing; and prior authorization.

(29) "Medically Appropriate" means services and medical supplies required for prevention, diagnosis or treatment of a physical or mental health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual 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 an individual.

(30) "National Provider Identifier" (NPI) means a unique 10-digit identifier mandated by the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (HIPAA) for all healthcare providers that is good for the life of the provider.

(31) "Non-Contiguous Area Provider" means a provider located more than 75 miles from Oregon and enrolled with the Division.

(32) "Plan of Care" (POC) means a tool within the Medicaid Management Information System used to authorize certain Medicaid funded services for Individuals.

(33) "Provider" means an organizational entity, or qualified person, that is operated by or contractually affiliated with, a community mental health program, or contracted directly with the Division, for the direct delivery of addictions, problem gambling or mental health services and supports.

(34) "Psychiatric Residential Treatment Facility" means facilities that are structured residential treatment environments with daily 24-hour supervision and active psychiatric treatment, Psychiatric Residential Treatment Services (PRTS), Secure Children's Inpatient Treatment Programs (SCIP), Secure Adolescent Inpatient Treatment Programs (SAIP), and Sub-acute psychiatric treatment for children who require active treatment for a diagnosed mental health condition in a 24-hour residential setting.

(35) "Psychiatric Residential Treatment Services" means services delivered in a PRTF that include 24-hour supervision for children who have serious psychiatric, emotional or acute mental health conditions that require intensive therapeutic counseling and activity and intensive staff supervision, support and assistance.

(36) "Qualified Mental Health Associate" (QMHA) means a person delivering services under the direct supervision of a Qualified Mental Health Professional (QMHP) and meeting the following minimum qualifications as documented by the LMHA or designee:

(a) A bachelor's degree in a behavioral sciences field; or

(b) A combination of at least three year's relevant work, education, training or experience; and

(c) Has the competencies necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts; and

(C) Provide psychosocial skills development and to implement interventions prescribed on a Treatment Plan within the scope of his or her practice.

(37) "Qualified Mental Health Professional" (QMHP) means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

(a) Graduate degree in psychology;

(b) Bachelor's degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or group therapy within the scope of his or her practice.

(38) "Representative" means a person who acts on behalf of an individual at the individual's request with respect to a grievance, including, but

not limited to a relative, friend, employee of the Division, attorney or legal guardian.

(39) "System Of Care" means the comprehensive array of mental health and other necessary services which are organized to meet the multiple and changing needs of children with severe emotional disorders and their families.

(40) "Usual and Customary Charge" means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the Provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources (TPR) are to be considered.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12

309-016-0630

Payment

(1) The Division of Medical Assistance Programs or the Addictions and Mental Health Division (DMAP) will make payment in compliance with 42CFR 447.10. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Oregon Health Authority Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. DMAP may require that payment for services be made only after review by DMAP.

(2) The Division sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the AMH maximum allowable amount or the reimbursement specified in the individual program Provider rules:

(a) The Division's maximum allowable rate setting process uses a methodology that is based on the existing Medicaid fee schedule with adjustments for legislative changes and payment levels. The rates are updated periodically and posted on the Division's web site at <http://egov.oregon.gov/oha/mentalhealth/tools-providers.shtml>

(b) Provider rules may specify reimbursement rates for particular services or items. Provider specific rates are determined based on the Provider's allowable costs of providing the service.

(4) The Authority sets payment rates for out-of-state institutions and similar facilities, such as psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service.

(5) DMAP will not make payment on claims that have been assigned, sold, or otherwise transferred or when the Billing Provider, Billing Agent or Billing Service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a Provider for accounts receivable.

(6) Payment for DMAP Clients with Medicare and Medicaid, excluding qualified Medicare beneficiary programs:

(a) DMAP limits payment to the Medicaid allowed amount less the Medicare payment up to the Medicare co-insurance and deductible, whichever is less. DMAP payment cannot exceed the co-insurance and deductible amounts due;

(b) DMAP pays the DMAP allowable rate for DMAP covered services that are documented to be not covered by Medicare.

(7) For Clients with Third-Party Resources (TPR), DMAP pays the DMAP allowed rate less the TPR payment but not to exceed the billed amount.

(8) DMAP payments, including contracted Prepaid Health Plan (PHP) payments, unless in error, constitute payment in full, except in lim-

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ited instances involving allowable spend-down or copayments. For DMAP such 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 DMAP allowable payment; and

(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 individual Provider rules.

(9) The Division will reimburse providers consistent with all requirements in 42CFR447.45 Timely Claims Payment including but not limited to:

(a) The Division must pay 90 percent of all clean claims from Providers within 30 days of the date of receipt.

(b) The Division must pay 99 percent of all clean claims from Providers within 90 days of the date of receipt.

(c) The Division must pay all other claims within 12 months of the date of receipt except in various circumstances listed in 42CFR447.45(4).

(10) Payment by DMAP does not limit the Authority or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12

309-016-0675

Prior Authorization

Authorization of Payment.

(1) Some of the services or items covered by the Division require authorization before payment will be made. Some services require authorization before the service can be provided. Services requiring prior authorization can be found on the Mental Health Procedure Codes and Reimbursement Rates Table located at <http://egov.oregon.gov/oha/mentalhealth/tools-providers.shtml>. The procedure for receiving authorization is detailed in the Provider Manual found on the same website.

(2) Documentation submitted when requesting authorization must support the medical justification for the service. A complete request is one that contains all necessary documentation and meets any other requirements as described in the appropriate Provider rules.

(3) The Division will authorize for the level of care or type of service that meets the Individual's medical need. Only services which are Medically Appropriate and for which the required documentation has been supplied may be authorized. The authorizing agency may request additional information from the Provider to determine medical appropriateness or appropriateness of the service.

(4) The Division and its authorizing agencies are not required to authorize services or to make payment for authorized services under the following circumstances:

(a) The individual was not eligible for Medicaid at the time services were provided. The provider is responsible for checking the individual's eligibility each time services are provided;

(b) The Provider does not hold a valid Certificate of Approval from the Division for the service;

(c) The Provider cannot produce appropriate documentation to support medical appropriateness, or the appropriate documentation was not submitted to the Division;

(d) The service has not been adequately documented (see 309-016-0610.); that is, the documentation in the Provider's files is not adequate to determine the type, medical appropriateness, or frequency and duration of services provided and required documentation is not in the Provider's files;

(e) The services billed or provided are not consistent with the information submitted when authorization was requested or the services provided are determined retrospectively not to be medically appropriate;

(f) The services billed are not consistent with those provided;

(g) The services were not provided within the timeframe specified on the authorization of payment document;

(h) The services were not authorized or provided in compliance with these rules, the General Rules and in the appropriate Provider rules.

(i) The provider was not eligible to receive reimbursement from Medicaid at the time the service was rendered.

(5) Payment made for services described in subsections (a)-(h) of this rule will be recovered (see also Basis for Mandatory Sanctions and Basis for Discretionary Sanctions).

(6) Retroactive Eligibility:

(a) In those instances when Individuals are made retroactively eligible, authorization for payment may be given if:

(A) The Individual was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules, and;

(C) The request for authorization is received by the Division within 90 days of the date of service;

(b) Services provided when a Medicaid-eligible Individual is retroactively disenrolled from a Prepaid Health Plan (PHP) or services provided after the Individual was disenrolled from a PHP may be authorized if:

(A) The Individual was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules; and

(C) The request for authorization is received by the Division within 90 days of the date of service;

(c) Any requests for authorization after 90 days from date of service require documentation from the Provider that authorization could not have been obtained within 90 days of the date of service.

(7) The Division will process requests for prior authorization that do not require additional information from the provider or third party consistent with timeliness of payments for clean claims described in 42CFR447.45 and included in 309-016-0630(9).

(8) Prior Authorization is valid for the time period specified on the authorization notice, but not to exceed 12 months, unless the Individual's benefit package no longer covers the service, in which case the authorization will terminate on the date coverage ends.

(9) Prior Authorization for Individuals with other insurance or for Medicare beneficiaries:

(a) When Medicare is the primary payer for a service, no Prior Authorization from the Division is required, unless specified in the appropriate program Provider rules;

(b) For Individuals who have private insurance or other Third Party Resources (TPRs), such as Blue Cross, Tri-Care, etc., the Division requires Prior Authorization as specified above and in the appropriate Provider rules when the other insurer or resource does not cover the service or when the other insurer reimburses less than the Division rate;

(c) For Individuals in a Medicare's Social Health Maintenance Organization (SHMO), the SHMO requires Payment Authorization for some services. The Division requires Prior Authorization for services which are covered by the Division but which are not covered under the SHMO as specified above and in the appropriate Provider rules.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12

309-016-0685

Variations

A variance from those portions of these rules that are not derived from federal regulations, Oregon's Medicaid State Plan or the General Rules for Oregon Medical Assistance Programs may be granted to an applicant for a period of up to one year in the following manner:

(1) The applicant shall submit to the Division's Medicaid Policy Unit a written request which includes:

(a) The section(s) of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought unless under the discretion of the Division the practice detailed in the variance will be ongoing to be renewed annually.

(2) The Division's Director shall approve or deny the request for variance in writing.

(3) The Division's Medicaid Policy Unit shall notify the Provider of the decision in writing within 30 days of receipt of the request.

(4) Appeal of the denial of a variance request shall be to the Director, whose decision shall be final.

(5) Variances may only be granted for up to one year. A Provider requesting a Variance to be continued beyond one year must re-apply.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

ADMINISTRATIVE RULES

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12

309-016-0745 Service Criteria

Children shall be served in the least restrictive, least intensive setting based on their treatment history, degree of impairment, current symptoms and the extent of family and other supports. The provider must recommend the appropriate level of care to the child and parent or guardian when a more restrictive or less restrictive level of care is determined to be medically necessary.

(1) The following criteria are used to determine the appropriateness of continued stay:

(a) The child is making observed progress toward identified treatment goals as documented in the individual plan of care, but the measurable treatment objectives necessary to reach the goals have not been completed;

(b) The child made no documented progress toward treatment goals, but the individual plan of care and measurable objectives necessary to reach the goals have been reviewed by the LMP and modified in order to reevaluate the child's treatment needs, clarify the nature of the identified problems, and/or initiate new therapeutic interventions; or

(c) The child exhibits new symptoms or maladaptive behaviors that justify continuation and can be safely and effectively treated at a community-based residential level of care. The individual service and support plan has been revised accordingly.

(2) A planned transfer will occur when the following criteria are met:

(a) The child's targeted symptoms and maladaptive behaviors have abated to an established baseline level as documented by the attainment of specific goals and measurable objectives in the individual plan of care; or

(b) The child exhibits new symptoms and maladaptive behaviors which may not be safely or effectively treated at this level of care; or

(c) The child is not benefiting from treatment and made no progress toward specific treatment goals or measurable objectives even though appropriate individual service and support plan reviews and revisions were conducted.

(3) Planned transfer will be consistent with the transfer criteria established by the interdisciplinary team and documented in the ISSP. In addition:

(a) Providers will not transfer an individual unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care; and

(b) If the determination is made to admit the child to acute care, the provider will not conclude services during the acute care stay unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care following the acute care stay.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12

309-016-0750

Payments

(1) Payments will be made for the provision of active psychiatric residential treatment services, including approved leave for children eligible for such services under Medicaid. If active treatment is not documented during any period in which Division payments are made on behalf of a child, the Division may recoup such payments.

(2) The Division will pay for the day of admission but not for the day of transfer or discharge.

(3) Medicaid eligible children receiving psychiatric residential treatment services will be subject to periodic review by an interdisciplinary team to determine medical appropriateness and quality of services. If a review reveals that a child received an inappropriate level of care, i.e., less than active treatment, payment will not be allowed under these rules.

(4) Payment for planned absences from the program such as home care visits, and transitions shall be allowed if the absences are:

(a) Based on the individual clinical needs of the child; and

(b) Specified in the child's Individual Service and Support Plan's measurable objectives and/or transfer plan; and

(c) Documented in individual service notes; and

(d) The duration of any single planned absence is no more than three consecutive days, unless a longer duration is authorized in writing by the Division.

(5) Payment for unplanned absences from the program such as run-away, hospitalization, and detention (check on eligibility) shall be allowed if;

(a) The provider clearly documents in the child's individual service record regular and ongoing service coordination efforts undertaken by the program during the unplanned absence; and

(b) The provider clearly documents in the child's individual service record that the child will be returned to the program when the unplanned absence is resolved; and

(c) The duration of any single unplanned absence is no more than seven consecutive days, unless longer duration is authorized in writing by the Division.

(6) Payment for unplanned absences from the program shall be disallowed if the child is not returned to the program, unless the interdisciplinary team, in consultation with the child's parent(s) or guardian or provider of the next level of care determines that the child requires a more or less restrictive level of care.

(7) Planned absences from the program which are not indicated in the child's Individual Services and Supports Plan and/or transfer plan shall be considered unplanned absences and payment will be disallowed.

(8) Payments for planned absences must be made consistent with 42CFR447.40.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12

Rule Caption: Admission and Discharge of Mentally Ill Persons.

Adm. Order No.: MHS 11-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 4-1-2012

Rules Repealed: 309-031-0200, 309-031-0205, 309-031-0210, 309-031-0215, 309-031-0220, 309-031-0250, 309-031-0255

Subject: These rules prescribe criteria and procedures for admission and discharge of mentally ill persons at state hospital settings.

These rules have been replaced by permanent rules 309-091-0000 through 309-091-0050.

Rules Coordinator: Nola Russell—(503) 945-7652

Rule Caption: Medicaid Payment for Addictions and Mental Health Services.

Adm. Order No.: MHS 12-2012(Temp)

Filed with Sec. of State: 6-27-2012

Certified to be Effective: 7-1-12 thru 12-27-12

Notice Publication Date:

Rules Adopted: 309-016-0760, 309-016-0765, 309-016-0770, 309-016-0775, 309-016-0780, 309-016-0800, 309-016-0805, 309-016-0810, 309-016-0815, 309-016-0820

Rules Amended: 309-016-0600, 309-016-0605

Subject: These rules specify standards for authorized appropriate reimbursement of Medicaid or State Children's Health Plan funded addictions and mental health services and supports.

The current rulemaking activity adds temporary new rules about provider enrollment, service eligibility and payment information related to alcohol and drug residential treatment services programs and substance use disorder detoxification treatment centers.

Rules Coordinator: Nola Russell—(503) 945-7652

309-016-0600

Scope

These rules specify standards for authorized appropriate reimbursement of Medicaid or State Children's Health Plan funded addictions and mental health services and supports. This includes payments for community-based services as well as those payments made for acute inpatient services in a general medical setting or a freestanding facility meeting the federal definition as an institute for mental disease reimbursed as a result of a request for payment. The requirements set forth here in OAR 309-016-0600 through 309-016-0820 and referenced rules must be met in order for Medicaid payment to have been made appropriately.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

ADMINISTRATIVE RULES

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12; MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0605

Definitions

(1) "Action" means:

(a) The denial, limitation or restriction of a requested covered services including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service; or

(c) The failure to provide services in a timely manner, as defined by the Addictions and Mental Health Division of the Oregon Health Authority.

(2) "Active Treatment" means a service provided as prescribed in a professionally developed and supervised Individual Services and Supports Plan to address or improve a condition.

(3) "Addictions and Mental Health Division" means the Division of the Oregon Health Authority responsible for the administration of addictions and mental health services provided in Oregon or to its residents.

(4) "Allowable Cost" means the cost of treatment services based on cost finding principles found in the appropriate OMB Circular such as "Cost Principles for Non-Profit Organization" (OMB Circular A-122) or "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87) and including allowable costs incurred for interest on the acquisition of buildings and improvements thereon.

(5) "Appeal" means a request by an Individual or their representative to review an Action as defined in this rule.

(6) "Certificate of Approval" means the document awarded by the Division signifying that a specific, named organization is judged by the Division to operate in compliance with applicable rules. A "Certificate of Approval" for mental health services is valid only when signed by the Deputy Director of the Division of Mental Health Services and, in the case of a subcontract provider of a CMHP, the CMHP director.

(7) "Certification of Need" means the procedures established by the Division to certify in writing a child's need for psychiatric residential treatment services.

(8) "Child" or "Children" means a person under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, will be considered a child until age 21 for purposes of these rules.

(9) "Children, Adults and Families" (CAF) means the Division serving as Oregon's child welfare agency.

(10) "Clean Claim(s)" means a claim that can be processed without obtaining additional information from the provider of the service or from a third party. It includes a claim with errors originating in the State's claims system. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity.

(11) "Commission on Accreditation of Rehabilitation" (CARF) means an organization that accredits behavioral health care and community providers based on the current edition of the "CARF Behavioral Health" standards manual.

(12) "Community Mental Health Program" (CMHP) means an entity that is responsible for planning and delivery of services for persons with substance use disorders, mental health diagnosis, or developmental disabilities, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(13) "Complaint" means an expression of dissatisfaction from an Individual or their representative to a Practitioner or Provider about any matter other than an Action.

(14) "Council on Accreditation of Services for Families and Children Facilities" (COA) means an organization that accredits behavioral health care and social service programs based on the current edition of the COA "Standards for Behavioral Health Care Services and Community Support and Education Services Manual."

(15) "Disabling Mental Illness" means a mental illness that substantially limits functioning in one or more major life activity.

(16) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(17) "Division of Medical Assistance Programs" (DMAP) means the Division of the Oregon Health Authority 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.

(18) "DMAP/AMH" means the Division of Medical Assistance or Addictions and Mental Health Division. Both DMAP and AMH have delegated responsibilities for the administration of Medicaid funded addictions

and mental health services and supports. A lead agency will be identified to each entity involved in any process when the delegation of such is necessary.

(19) "Diagnostic and Statistical Manual" (DSM) means the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(20) "Grievance System" means the overall system in which an Individual can express dissatisfaction and that expression acted on if necessary. The Grievance System includes a Complaint process, and Appeals process and access to the Division of Medical Assistance Programs Administrative Hearing process.

(21) "Habilitation Services" means services designed to help an individual attain or maintain their maximal level of independence, including the individual's acceptance of a current residence and the prevention of unnecessary changes in residence. Services are provided in order to assist an individual to acquire, retain or improve skills in the one or more of the following areas: assistance with activities of daily living, cooking, home maintenance, recreation, community inclusion and mobility, money management, shopping, community survival skills, communication, self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

(22) "Individual" means any person being considered for or receiving services and supports.

(23) "Individual Service and Support Plan" (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the desired outcomes of service.

(24) "Interdisciplinary Team" means the group of people designated to advise in the planning and provision of services and supports to individuals receiving Intensive Treatment Services (ITS) and Enhanced Care Services (ECS) and may include multiple disciplines or agencies. For ITS programs, the composition of the interdisciplinary team must be consistent with the requirements of 42 CFR Part 441.156.

(25) "Joint Commission on Accreditation of Healthcare Organizations" (JCAHO) means the Joint Commission on Accreditation of Healthcare Organizations. The Joint Commission accredits psychiatric residential treatment facilities according to its current edition of the "Comprehensive Accreditation Manual for Behavioral Health Care."

(26) "Letter of Approval" means the document awarded to service providers under OAR 309-012-0010 which states that the provider is in compliance with applicable administrative rules of the Division. Letters of Approval issued for mental health services are obsolete upon their expiration date, or upon the effective date of 309-012-0140, whichever is later.

(27) "Licensed Medical Practitioner" (LMP) means a person who meets the following minimum qualifications as documented by the LMHA or designee:

(a) Physician licensed to practice in the State of Oregon; or

(b) Nurse practitioner licensed to practice in the State of Oregon; or

(c) Physician's Assistant licensed to practice in the State of Oregon.

(d) In addition, whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For ICTS and ITS providers, a "Licensed Medical Practitioner" or "LMP" means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(28) "Local Mental Health Authority" (LMHA) means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a Community Mental Health Program (CMHP);

(b) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(29) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to eligible persons, under Title XIX of the Social Security Act.

(30) "Medicaid Management Information System" The mechanized claims processing and information retrieval system that all states are required to have according to section 1903(a)(3) of the Social Security Act and defined in regulation at 42 CFR 433.111. All states operate an MMIS to support Medicaid business functions and maintain information in such areas as provider enrollment; client eligibility, including third party liability; benefit package maintenance; managed care enrollment; claims processing; and prior authorization.

ADMINISTRATIVE RULES

(31) "Medically Appropriate" means services and medical supplies required for prevention, diagnosis or treatment of a physical or mental health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual 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 an individual.

(32) "National Provider Identifier" (NPI) means a unique 10-digit identifier mandated by the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (HIPAA) for all healthcare providers that is good for the life of the provider.

(33) "Non-Contiguous Area Provider" means a provider located more than 75 miles from Oregon and enrolled with the Division.

(34) "Plan of Care" (POC) means a tool within the Medicaid Management Information System used to authorize certain Medicaid funded services for Individuals.

(35) "Provider" means an organizational entity, or qualified person, that is operated by or contractually affiliated with, a community mental health program, or contracted directly with the Division, for the direct delivery of addictions, problem gambling or mental health services and supports.

(36) "Psychiatric Residential Treatment Facility" means facilities that are structured residential treatment environments with daily 24-hour supervision and active psychiatric treatment, Psychiatric Residential Treatment Services (PRTS), Secure Children's Inpatient Treatment Programs (SCIP), Secure Adolescent Inpatient Treatment Programs (SAIP), and Sub-acute psychiatric treatment for children who require active treatment for a diagnosed mental health condition in a 24-hour residential setting.

(37) "Psychiatric Residential Treatment Services" means services delivered in a PRTF that include 24-hour supervision for children who have serious psychiatric, emotional or acute mental health conditions that require intensive therapeutic counseling and activity and intensive staff supervision, support and assistance.

(38) "Qualified Mental Health Associate" (QMHA) means a person delivering services under the direct supervision of a Qualified Mental Health Professional (QMHP) and meeting the following minimum qualifications as documented by the LMHA or designee:

(a) A bachelor's degree in a behavioral sciences field; or

(b) A combination of at least three year's relevant work, education, training or experience; and

(c) Has the competencies necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts; and

(C) Provide psychosocial skills development and to implement interventions prescribed on a Treatment Plan within the scope of his or her practice.

(39) "Qualified Mental Health Professional" (QMHP) means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

(a) Graduate degree in psychology;

(b) Bachelor's degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multi-axial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or group therapy within the scope of his or her practice.

(40) "Representative" means a person who acts on behalf of an individual at the individual's request with respect to a grievance, including, but not limited to a relative, friend, employee of the Division, attorney or legal guardian.

(41) "Residential Alcohol and Other Drug Treatment Program" means a publicly or privately operated Program as defined in ORS 430.010 that provides assessment, treatment, rehabilitation and twenty four hour observation and monitoring for individuals with alcohol and other drug dependence, consistent with Level III of American Society of Addiction Medicine (ASAM) PCCC-2R.

(42) "Substance Use Disorder Detoxification Treatment Center or "Center" means a publicly or privately operated facility approved by the Division, that provides 24-hour a day non-hospital emergency care and treatment services for persons who are suffering from substance intoxication or its withdrawal symptoms. A center is not intended to serve as a secure holding facility for the detention of any individual.

(43) "System Of Care" means the comprehensive array of mental health and other necessary services which are organized to meet the multiple and changing needs of children with severe emotional disorders and their families.

(44) "Usual and Customary Charge" means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the Provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources (TPR) are to be considered.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12; MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0760

Conditions of Service Provider Participation

The provider shall meet the following requirements:

(1) Possess the appropriate current and valid License, Letter of Approval and/or Certificate of Approval issued by the Division provided as outlined in OAR 415-012-0020;

(2) Develop a Cost Allocation Plan to support the Provider's Usual and Customary Charge. Usual and customary charge is defined in OAR 410-120-0000;

(3) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the Division;

(4) Participate in the claim review process outlined in OAR 410-120-1397; and

(5) Possess a contract with the Division to provide Alcohol and Drug Residential Treatment to Medicaid eligible individuals or be a subcontractor of an AMH Alcohol and Drug Residential treatment contractor.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0765

Individual Provider Enrollment

Providers shall meet all requirements in OAR410-120-1260, Medical Assistance Programs Provider Enrollment, OAR 407-120-0310 Provider Requirements and 407-120-0320, Provider Enrollment.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0770

Payment

(1) Payments will be made for the provision of active A&D residential treatment services, including approved leave for individuals for such services under Medicaid. If active treatment is not documented during any period in which Division payments are made on behalf of the individual, the Division may recoup such payments.

(2) Payment for planned absences from the program such as hospitalizations, home visits, and transitions shall be allowed if the absences are:

(a) Based on the individual clinical needs; and

(b) Specified in the Individual Service and Support Plan's measurable objectives and/or transfer plan; and;

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(c) The provider clearly documents in the individual service record ongoing daily treatment service provided by the program during the absence; and

(d) The bed is not filled by any other individual during the absence; and

(e) The duration of any single planned absence is no more than seven consecutive days, unless a longer duration is authorized in writing by the Division

(3) Payment for unplanned absences from the program such as hospitalizations and incarceration (check Medicaid eligibility) shall be allowed if;

(a) The provider clearly documents in the individual service record ongoing daily treatment service provided by the program during the unplanned absence; and

(b) The provider clearly documents in the individual service record that the individual will be returned to the program when the unplanned absence is resolved and the bed is not filled by any other individual during the absence; and

(c) The duration of any single unplanned absence is no more than three consecutive days, unless longer duration is authorized in writing by the Division.

(4) Payment for a reserved bed is not covered under Medicaid consistent with 42 CFR 447.40

(5) Room and Board is not covered under Medicaid

(6) Payment will be made for each daily unit of service billed, reimbursed at the contracted per diem rate. A daily unit of service is defined in OAR 309-016-0630

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0775

Sanctions

Sanctions will be imposed on Providers when necessary in accordance with OAR 410-120-1400 through 410-120-1460 Medical Assistance Programs Provider Sanctions and Types and Conditions of Sanction.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0780

Individual Eligibility

(1) To be eligible for Alcohol and Drug Residential Treatment service under these rules the individual must be a current Medicaid recipient of at least one of the following programs defined in OAR 461-101-0010:

(a) Extended Medical (EXT);

(b) Medical Assistance Assumed (MAA);

(c) Medical Assistance to Families (MAF);

(d) Oregon Health Plan (OHP), OHP means OHP-CHP, OHP-OPC, OHP-OPP, OHP-OPU and OHP-OP6;

(e) General Assistance Medical (GAM);

(f) Oregon Supplemental Income Program Medical (OSIPM);

(g) Medical Coverage for Children in Substitute or Adoptive Care (SAC);

(h) Healthy Kids Connect (HKC) or;

(i) Continuous Eligibility (CEC)

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231

Stats. Implemented: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049,

414.025, 414.231, 414.826, 414.831, 414.839

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0800

Conditions of Service Provider Participation

Provider shall meet the following requirements:

(1) Possess the appropriate current and valid License, Letter of Approval and/or Certificate of Approval issued by the Division provided as outlined in OAR 415-012-0000 to 415-012-0090;

(2) Develop a Cost Allocation Plan to support the Provider's Usual and Customary Charge. Usual and customary charge is defined in OAR 410-120-0000;

(3) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the Division;

(4) Participate in the claim review process outlined in OAR 410-120-1397; and

(5) Center to be in compliance with 415-050-0000 to 415-050-0095.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0805

Provider Enrollment

Providers shall meet all requirements in OAR 410-120-1260, Medical Assistance Programs Provider Enrollment, OAR 407-120-0310 Provider Requirements, and 407-120-0320 Provider Enrollment.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0810

Payment

(1) DMAP or the Division will make payment in compliance with 42 CFR 447.10. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Oregon Health Authority Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. DMAP may require that payment for services be made only after review by DMAP.

(2) The Division sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the AMH maximum allowable amount or the reimbursement specified in the individual program Provider rules:

(a) The Division's maximum allowable rate setting process uses a methodology that is based on the existing Medicaid fee schedule with adjustments for legislative changes and payment levels. The rates are updated periodically and posted on the Division's web site

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 414.725 & 414.737, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0815

Sanctions

Sanctions will be imposed on Providers when necessary in accordance with OAR 410-120-1400 through 410-120-1460 Medical Assistance Programs Provider Sanctions and Types and Conditions of Sanction

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

309-016-0820

Individual Eligibility

(1) To be eligible for Detoxification Treatment services under these rules the individual must be a current Medicaid recipient.

(2) Providers are responsible to verify an individual is a Medicaid recipient as outlined in OAR 410-120-1140

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065, 414.025 & 414.047

Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12

Rule Caption: Forensic Mental Health Evaluators and Evaluations.

Adm. Order No.: MHS 13-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 5-1-2012

Rules Adopted: 309-090-0000, 309-090-0005, 309-090-0010, 309-090-0015, 309-090-0020, 309-090-0025, 309-090-0030, 309-090-0035, 309-090-0040, 309-090-0050

Rules Repealed: 309-090-0000(T), 309-090-0005(T), 309-090-0010(T), 309-090-0015(T), 309-090-0020(T), 309-090-0025(T), 309-090-0030(T), 309-090-0035(T), 309-090-0040(T)

Subject: These rules implement HB 3100 of the 2011 Oregon Laws, which relate to court-ordered evaluations of individuals whose competency to aid in their defense or their capacity to be criminally responsible – as defined in statutes, is in question.

These rules establish minimum standards for the certification of evaluators and will ensure

forensic evaluations meet consistent quality standards.

Rules Coordinator: Nola Russell—(503) 945-7652

ADMINISTRATIVE RULES

309-090-0000

Purpose and Scope

These rules establish minimum standards for the certification of psychiatrists and licensed psychologists related to performing forensic examinations and evaluations as described in ORS 161.309–161.370 and 419C.524. The rules are intended to ensure that forensic evaluations meet consistent quality standards and are conducted by qualified and trained evaluators. The Oregon Health Authority (OHA) shall provide training, certify qualified applicants and maintain a list of certified forensic evaluators for statewide use.

Stat. Auth.: ORS 413.042; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0005

Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Competence" is defined according to ORS 161.360

(3) "Conditional Certification" means a psychologist or psychiatrist is temporarily Court-designated as a certified evaluator as defined in OAR 309-090-0010(c).

(4) "Criminal Responsibility" is defined according to ORS 161.295

(5) "Division" means the Addictions and Mental Health (AMH) Division of the Authority.

(6) "Evaluator" means a psychiatrist or psychologist certified by the Authority to perform forensic evaluations.

(7) "Forensic Psychiatric or Psychological Evaluation" means the assessment of a defendant in which the certified forensic evaluator opines on a specific psycho-legal referral question related to ORS 161.360 or 161.295, and is ordered by the Court or requested by associated attorneys.

(8) "Full Certification" means a psychiatrist or licensed psychologist in the state of Oregon satisfying the requirements of this chapter as defined in OAR 309-090-0010(a).

(9) "Psychiatrist" means a psychiatrist licensed by the Board pursuant to ORS 677.010 through 677.450 and who has completed an approved residence training program in psychiatry.

(10) "Licensed Psychologist" means a psychologist licensed pursuant to ORS 675.110 through 675.065 by the Board of Psychologist Examiners.

(11) "Mental Defect" means mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the current Diagnostic and Statistical Manual of Mental Disorders Fourth Edition; Text Revised (DSM-IV-TR) or hereto forward editions of the DSM of the American Psychiatric Association.

(12) "Mental Disease" means any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the current Diagnostic and Statistical Manual of Mental Disorders Fourth Edition; Text Revised (DSM-IV-TR) or hereto forward editions of the DSM of the American Psychiatric Association.

(a) The term "mental disease or defect" does not include an abnormality manifested solely by repeated or criminal or otherwise antisocial conduct;

(b) For offenses committed on or after January 1, 1984, the term "mental disease or defect" does not include any abnormality constituting solely a personality disorder.

(13) "Oregon Forensic Evaluator Training Program" means a training program approved by the Authority to teach psychiatrists and psychologists the knowledge and skills required to perform forensic evaluations and testimony for the state courts.

(14) "Substantial Danger to Others" means if in the community an individual is a substantial danger of posing a significant risk of harming others in the near future as a result of a mental disease or defect.

(15) "Successful completion of training" shall mean attendance at the entire training and passing the exam given at the conclusion of the training.

(16) "Temporary Certification" means a psychiatrist or licensed psychologist in the state of Oregon satisfying the requirements as defined in OAR 309-090-0010(b)

(17) "Testimony" means a declaration, usually made orally by a witness under oath in response to interrogation by a lawyer or authorized public official.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0010

Forensic Certification Types and Requirements

(1) Psychiatrists and psychologists must be certified by the Authority to submit evaluations and provide testimony to the court for the purpose of criminal responsibility or competency when ordered by the court as required in ORS 161.309, 161.365 and 419C.524.

(2) There are three types of certifications, as follows:

(a) Full Certification:

(A) A psychiatrist must have a current license to practice in Oregon, participate in and successfully complete the Oregon Forensic Evaluator Training and submit for review three redacted forensic evaluations completed within the previous 24 months. If the applicant desires to perform criminal responsibility evaluations, at least one redacted sample shall be an evaluation of criminal responsibility.

(B) A licensed psychologist must have a current Oregon license to practice, participate in and successfully complete the Oregon Forensic Evaluator Training, and submit for review three redacted forensic evaluations completed within the previous 24 months. If the applicant desires to perform criminal responsibility evaluations, at least one redacted sample shall be an evaluation of criminal responsibility, or

(1) If no redacted forensic evaluations are available an applicant may perform evaluations of those charged with crimes other than aggravated murder, murder or ballot measure 11 offenses for the purpose of generating reports to the Authority for review. The applicant must notify the Authority at the time of application that they will be doing evaluations for this purpose and a Temporary Certification will be issued.

(C) Psychiatrists and Licensed Psychologists meeting the above criteria for full certification who desire to perform competency and criminal responsibility evaluations for juveniles shall participate in the specialized segment of the Oregon Forensic Evaluator Training and at least one of the three required redacted forensic evaluations shall be for juvenile competency or criminal responsibility.

(D) Full Certification has a maximum duration of 24 months from certification date.

(b) Temporary Certification

(A) Psychiatrists and licensed psychologists who submit an application for Forensic Evaluator Certification will be granted a Temporary Certification, valid January 1, 2012 through August 31, 2012 for the purpose of allowing applicants to participate in and successfully complete the Oregon Forensic Evaluator Training Program. Applicants shall provide three redacted forensic evaluations, completed within the previous five years. If the applicant desires to perform criminal responsibility evaluations, at least one redacted sample shall be an evaluation of criminal responsibility. Applicants who successfully complete the training and provide the required documents will be granted a full certification based on the requirements above;

(B) Psychiatrists and licensed psychologists who submit application for Forensic Evaluator Certification on or after September 1, 2012 will be granted a Temporary Certification until participation in and successful completion of the Oregon Forensic Evaluator Training and submission of three redacted forensic evaluations. If the applicant desires to perform criminal responsibility evaluations, at least one redacted sample shall be an evaluation of criminal responsibility. Applicants must attend the next regularly scheduled training date or request an extension which may be granted by the Authority.

(C) For Certification purposes, psychiatrists enrolled in an ACGME-Accredited residency training program may participate in evaluations where certification is required under Oregon Revised Statutes (ORS) 161.309, 161.365 and 419C.524 only under the direct supervision and review of a psychiatrist or psychologist that has been granted full certification under the provisions of OAR 309-090-0010.

(D) Temporary certification has a maximum duration of 6 months. An extension of an additional 6 months may be granted by the Authority.

(c) Conditional Certification

(A) A psychiatrist or licensed psychologist, who has not been certified by OHA, may be granted conditional certification by the court, if exigent circumstances exist such as an out of state expert evaluation being sought, or an unusual expertise is required. The court will notify the Authority of the granting of a conditional certification. Conditional Certification ends at the disposition of the particular case for which the conditional certification was granted.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

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Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0015

Application Requirements and Process

(1) Applications must be submitted to the Authority using a form and in a manner prescribed by the Authority.

(2) The application must be accompanied by:

(a) Proof of Licensure by the State of Oregon, as a Psychiatrist or Psychologist.

(b) A copy of a current resume or curriculum vitae providing documentation of forensic training and experience.

(c) Required redacted forensic evaluations of competency or criminal responsibility; and

(d) A non-refundable application fee of \$250.00.

(3) After a complete application packet is received the Authority will:

(a) Evaluate the materials to determine whether the psychiatrist or psychologist is qualified for Full or Temporary Certification;

(b) Grant, deny or place conditions on a certification and

(c) Issue a written statement to the applicant of its determination.

(4) An application may be denied for any of the following reasons:

(a) The applicant attempted to procure a certification through fraud, misrepresentation or deceit;

(b) The applicant submitted to the Authority any notice, statement or other document required for certification which is false or untrue, or contains any material misstatement or omission of fact;

(c) The applicant has been convicted of a felony or

(d) The applicant fails to meet the requirements for receiving certification.

(5) Certification may be revoked for any of the following reasons:

(a) The evaluator fails to meet any of the applicable requirements of these rules;

(b) The evaluator loses his or her professional license for any reason;

(c) The Authority receives two or more written complaints regarding the content of written reports during one certification timeframe; the forensic evaluation review panel reviews the complaints and determines that the deficiencies in the reports represent a substantial departure from the standards of practice established by these rules.

(6) If the division determines denial or revocation may be warranted, the division, in consultation with the forensic evaluation review panel shall provide written notice, which may include recommended remediation steps provided by the review panel, of its intent and the applicant shall have 30 days from the date of notice to respond with a written plan for remediation. If this plan is approved by the division, the evaluator will maintain temporary certification status for up to six months at which time the division will determine whether the issues raised have been adequately addressed. If the issues have been adequately addressed, the division shall withdraw its notice and restore full certification. If the issues have not been adequately addressed, the division may proceed with denial or revocation of certification and shall provide notice of the applicant's right to appeal, pursuant to the provisions of ORS Chapter 183.

(7) If certification is denied or revoked the applicant may request reconsideration by the Director of the Authority.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0020

Recertification Requirements

(1) An evaluator must request recertification using a form, and in a manner prescribed by the Authority.

(2) The minimum requirements for recertification are:

(a) Proof of Licensure by the State of Oregon, as a Psychiatrist or Psychologist;

(b) Participation and successful completion of updates to the Oregon Forensic Evaluator Training Program approved by the Authority;

(c) Review and approval by the division of a minimum 3 redacted forensic evaluations completed during the 24 months following participation in the training program. If the applicant desires to perform criminal responsibility evaluations, at least one redacted sample shall be an evaluation of criminal responsibility. If performing Juvenile evaluations one of these shall be a juvenile competency or criminal responsibility evaluation. These reports will be subject to review and must meet or exceed standards identified by the Authority as listed in OAR 309-090-0025; and

(d) A non-refundable application fee of \$250.00.

(3) Failure to satisfy the factors listed in (2) above shall result in a non-recertification order from the Authority.

(4) Failure to reapply shall constitute a forfeiture of full certification which may be restored only upon written application accepted by the Authority. Individuals who fail to reapply may receive a temporary certification for up to six months.

(5) Individuals who receive non-recertification orders may reapply for certification and will be certified after they meet all of the requirements for certification.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0025

Content of Written Evaluations Assessing Competency and Criminal Responsibility

(1) At minimum each forensic evaluation shall include the following:
(a) Identifying information of the defendant, a description of the forensic examination, criminal charges, the referral source and the referral question;

(b) The evaluative procedure, techniques and tests used in the examination and the purpose for each, informed consent and limits of confidentiality;

(c) Background information, relevant history of mental and physical illnesses, substance use and treatment histories, medications, hospital or jail course, and current setting.

(d) Summary of a mental status examination;

(e) A substantiated multi-axial diagnosis in the terminology of the American Psychiatric Association's current edition of the Diagnostic and Statistical Manual;

(f) A consideration of malingering must be present in every evaluation; and

(g) A summary of relevant records reviewed for the evaluation.

(2) In addition to 309-090-0025(1), when the defendant's competency is in question, the evaluation shall also include, at a minimum, opinions and explanations related to the defendant's:

(a) Understanding of his or her charges, the possible verdicts and the possible penalties;

(b) Understanding of the trial participants and the trial process;

(c) Ability to assist counsel in preparing and implementing a defense;

(d) Ability to make relevant decisions autonomously;

(e) If determined incapacitated:

(i) An opinion and explanation as to whether or not the individual is a substantial danger to others as defined in these rules; and

(ii) A recommendation of treatment and other services necessary for the defendant to gain or restore capacity.

(3) In addition to 309-090-0025(1), related to the question of criminal responsibility, the evaluation shall also include, at a minimum, opinions and explanations addressing:

(a) The defendant's account of the alleged offense(s) including thoughts, feelings and behavior;

(b) Summary of relevant records; including police reports,

(c) An expert opinion regarding the role of substance use in the alleged offense;

(d) The defendant's mental state at the time of the alleged offense(s) and

(e) An expert opinion regarding whether the defendant, as a result of mental disease or defect at the time of engaging in the alleged criminal conduct, lacked substantial capacity either to appreciate the criminality of the conduct or to conform to the requirements of law.

(f) An expert opinion regarding; if the individual is determined guilty except for insanity of a misdemeanor is the individual a substantial danger to others.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0030

Forensic Evaluation Review Panel

(1) The Forensic Evaluation Review Panel shall be appointed by and serve at the discretion of the Director of Addictions and Mental Health and will consist of, at a minimum;

(a) Two Psychiatrists eligible for full certification;

(b) Two Licensed Psychologists eligible for full certification;

(c) One defense attorney and

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(d) One prosecuting attorney.

(2) Individuals interested in participating in the Forensic Evaluation Review Panel shall submit a letter of interest along with a resume.

(3) Members shall be experienced in the criminal justice system and have familiarity with the issues of competency and criminal responsibility.

(4) Members shall serve a one year term and are eligible for reappointment for one additional term. Vacancies occurring during a member's term shall be filled immediately for the remainder of the unexpired term.

(5) Members shall be reimbursed on a per diem basis for each day during which the member is engaged in the performance of official duties.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0035

Forensic Evaluation Review Panel Process

(1) Three members of the Forensic Evaluation Review Panel will meet at the discretion of the authority to review all submitted redacted forensic evaluations as the need arises.

(2) Redacted forensic evaluations will be reviewed by three panel members with different professional backgrounds to determine whether the evaluations have met the requirements of form and content.

(3) Deciding members will issue a report to the division with feedback for the certified forensic evaluator.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0040

Forensic Evaluator Training Program

(1) The Authority will establish a course of training for persons desiring the issuance of a certificate. At a minimum the training will include instruction on:

(a) The Oregon statutes and case law applicable to the issues of competency and criminal responsibility;

(b) Clinical testing related to assessing competency and criminal responsibility

(c) The required contents of a report;

(d) The ethical standards and considerations relevant to an evaluation of competency and criminal responsibility

(e) The elements of expert witness testimony;

(f) Assessment of risk to others and recommendations for treatment and services

(2) Additional specialized training shall be required for evaluators desiring to perform evaluations on children younger than age 15 and other specialized populations.

(3) A test will be administered at the completion of this training.

(4) Updates to this training shall be provided every two years and consist of information regarding relevant changes to the law, rules, and process for Forensic Evaluator Certification.

Stat. Auth.: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12; MHS 13-2012, f. & cert. ef. 6-25-12

309-090-0050

Confidentiality

(1) Except for the names of certified evaluators, all records provided to the authority or the division under these rules are confidential and privileged and may not be released or utilized for any purpose outside these rules. Any practitioner who in good faith complies with these rules, including providing sample evaluations for review in order to maintain certification, is not responsible for any failure by another person or agency to maintain confidentiality, in regard to these rules.

Statutory Authority: ORS 161.309-161.370, 419C.524; OL 2011, HB 3100

Stats. Implemented: OL 2011, HB 3100

Hist.: MHS 13-2012, f. & cert. ef. 6-25-12

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Revisions to definitions, Program Integrity, Provider enrollment and technical corrections.

Adm. Order No.: DMAP 28-2012

Filed with Sec. of State: 6-21-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 5-1-2012

Rules Amended: 410-120-0000, 410-120-0025, 410-120-0250, 410-120-1260, 410-120-1340, 410-120-1395, 410-120-1860

Rules Repealed: 410-120-0000(T), 410-120-0027, 410-120-1860(T)

Subject: The General Rules program administrative rules govern Division payments for services to clients. The Division will amend as follows: OAR 410-120-0000, Add a definition for "indigent" and having temporarily amended 410-120-0000 effective March 16, 2012, the Division will permanently amend this rule to reflect definitions added or moved from other program rules. OAR 410-120-1260, Federal law requires State Medicaid agencies to perform specific provider screening, enrollment and reenrollment processes. The rule will be revised to reflect compliance with Section 6401 of the Affordable Care Act. Revisions will also be made to OAR 410-120-1340 due to the changes made to OAR 410-120-1260 as noted above. Some other minor 'readability' revisions are also made. OAR 410-120-1395, revisions include notifications to providers who are excluded from Medicaid and notifications to the Office of Inspector General regarding provider disclosures. Technical corrections to statute numbers will be made to OAR 410-120-0025 and 410-120-0250. Having temporarily amended 410-120-1860 effective February 1, 2012, the Division will permanently amend this rule to reflect that contested case procedures timeliness of a hearing request is based on the date the Authority receives it, not the date of the postmark. The Division will also repeal OAR 410-120-0027, this rule was a temporary measure and is no longer needed.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-120-0000

Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) or the Addictions and Mental Health Division (AMH) administrative rules applicable to the medical assistance program. This rule does not include an exhaustive list of Division acronyms and definitions. For more information, see Oregon Health Plan (OHP) program OAR 410-141-0000, Acronyms and Definitions, OAR 410-141-0300, and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 407 administrative rules, or contact the Division.

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Authority, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Authority.

(2) "Acupuncturist" means a person licensed to practice acupuncture by the relevant state licensing board.

(3) "Acupuncture Services" means services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(4) "Acute" means a condition, diagnosis or illness with a sudden onset and that is of short duration.

(5) "Acquisition Cost" means unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(6) "Addiction and Mental Health Division (AMH)" means a division within the Authority that administers mental health and addiction programs and services.

(7) "Adequate Record Keeping" means documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(8) "Administrative Medical Examinations and Reports" mean examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department branch office or requested or approved by the Authority to establish client eligibility for a medical assistance program or for casework planning.

(9) "Advance Directive" means an individual's instructions to an appointed individual specifying actions to take in the event that the individual is no longer able to make decisions due to illness or incapacity.

(10) "Adverse Event" means an undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

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(11) "Aging and People with Disabilities (APD)" means the division in the Department of Human Services (DHS) that administers programs for seniors and people with disabilities. This division was formerly named "Seniors and People with Disabilities (SPD)".

(12) "All-Inclusive Rate" or "Bundled rate" means the nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Division's Pharmaceutical Services program administrative rules and the Home Enteral/Parenteral Nutrition and IV Services program administrative rules, except as specified in OAR 410-120-1340, Payment.

(13) "Allied Agency" means local and regional governmental agency and regional authority that contracts with the Authority or Department to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(14) "Alternative Care Settings" mean sites or groups of practitioners that provide care to members under contract with a PHP or CCO, including urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, long-term care facilities and outpatient surgical centers.

(15) "Ambulance" means a specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of the Authority or the licensing standards of the state in which the ambulance provider is located.

(16) "Ambulatory Payment Classification" means a reimbursement method that categorizes outpatient visits into groups according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed. The groups are called Ambulatory Payment Classifications (APCs).

(17) "Ambulatory Surgical Center (ASC)" means a facility licensed as an ASC by the Authority.

(18) "American Indian/Alaska Native (AI/AN)" means a member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(19) "American Indian/Alaska Native (AI/AN) Clinic" means a clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(20) "Ancillary Services" mean services supportive of or necessary for providing a primary service, such as, anesthesiology, which is an ancillary service necessary for a surgical procedure.

(21) "Anesthesia Services" mean administration of anesthetic agents to cause loss of sensation to the body or body part.

(22) "Area Agency on Aging (AAA)" means the designated entity with which the Department contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to the elderly or elderly and disabled population.

(23) "Atypical Provider" means entity able to enroll as a billing provider (BP) or rendering provider for medical assistance programs related non-health care services but which does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(24) "Audiologist" means a person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(25) "Audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(26) "Automated Voice Response (AVR)" means a computer system that provides information on clients' current eligibility status from the Division by computerized phone or Web-based response.

(27) "Benefit Package" means the package of covered health care services for which the client is eligible.

(28) "Billing Agent or Billing Service" means 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.

(29) "Billing Provider (BP)" means a person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from the Division on behalf of a rendering

provider and has been delegated the authority to obligate or act on behalf of the rendering provider.

(30) "Buying Up" means the practice of obtaining client payment in addition to the Division or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up).

(31) "By Report (BR)" means services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(32) "Case Management Services" mean services provided to ensure that CCO members obtain health services necessary to maintain physical, mental and emotional development and oral health. Case management services include a comprehensive, ongoing assessment of medical, mental health, chemical dependency and/or dental needs plus the development and implementation of a plan to obtain or make referrals for needed medical, mental, chemical dependency or dental services, referring members to community services and supports which may include referrals to Allied Agencies.

(33) "Children, Adults and Families Division (CAF)" means a division within the Department, responsible for administering self-sufficiency and child-protective programs.

(34) "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 Authority.

(35) "Chiropractor" means a person licensed to practice chiropractic by the relevant state licensing board.

(36) "Chiropractic Services" mean services provided by a licensed chiropractor within the scope of practice, as defined under state law and Federal regulation.

(37) "Citizen/Alien-Waived Emergency Medical (CAWEM)" means aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210 (3)(f).

(38) "Claimant" means a person who has requested a hearing.

(39) "Client" means an individual found eligible to receive OHP health services. "Client" is inclusive of members enrolled in PHPs, PCMs and CCOs.

(40) "Clinical Nurse Specialist" means a registered nurse who has been approved and certified by the Board of Nursing to provide health care in an expanded specialty role.

(41) "Clinical Social Worker" means a person licensed to practice clinical social work pursuant to State law.

(42) "Clinical Record" means the medical, dental or mental health records of a client or member.

(43) "Comfort Care" means medical services or items that give comfort or pain relief to an individual who has a terminal illness, including the combination of medical and related services designed to make it possible for an individual with terminal illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness.

(44) "Contested Case Hearing" means a proceeding before the Authority under the Administrative Procedures Act when any of the following contests an action:

(a) A client or member or their representative;

(b) A PHP or CCO member's provider; or

(c) A PHP or CCO.

(45) "Contiguous Area" means the area up to 75 miles outside the border of the State of Oregon.

(46) "Contiguous Area Provider" means a provider practicing in a contiguous area.

(47) "Continuing Treatment Benefit" means a benefit for clients who meet criteria for having services covered that were either in a course of treatment or scheduled for treatment the day immediately before the date the client's benefit package changed to one that does not cover the treatment.

(48) "Co-Payments" mean the portion of a claim or medical, dental or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment).

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(49) "Cost Effective" means the lowest cost health care service or item that, in the judgment of Authority staff or its contracted agencies, meets the medical needs of the client.

(50) "Current Dental Terminology (CDT)" means a listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(51) "Current Procedural Terminology (CPT)" means the physicians' CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(52) "Date of Receipt of a Claim" means the date on which the Authority receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(53) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(54) "Dental Emergency Services" mean dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(55) "Dental Services" mean services provided within the scope of practice as defined under state law by or under the supervision of a dentist or dental hygienist.

(56) "Dentist" means a person licensed to practice dentistry pursuant to state law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(57) "Denturist" means a person licensed to practice denture technology pursuant to State law.

(58) "Denturist Services" mean services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(59) "Dental Hygienist" means a person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(60) "Dental Hygienist with an Expanded Practice Permit" means a person licensed to practice dental hygiene services as authorized by the Board of Dentistry with an Expanded Practice Dental Hygienist Permit (EPDHP) pursuant to State law.

(61) "Dentally Appropriate" means services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the client or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a client.

(62) "Department of Human Services (Department or DHS)" means the agency established in ORS Chapter 409, including such divisions, programs and offices as may be established therein.

(63) "Department Representative" means a person who represents the Department and presents the position of the Department in a hearing.

(64) "Diagnosis Code" means 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.

(65) "Diagnosis Related Group (DRG)" means a system of classification of diagnoses and procedures based on the ICD-9-CM.

(66) "Division of Medical Assistance Programs (Division)" means a division within the Authority; the Division 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.

(67) "Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS)" mean equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of ill-

ness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(68) "Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medichex)" mean the Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(69) "Electronic Data Interchange (EDI)" means 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 Authority designates for EDI transactions. For purposes of rules 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

(70) "EDI Submitter" means an individual or an entity authorized to establish an electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(71) "Electronic Verification System (EVS)" means eligibility information that has met the legal and technical specifications of the Authority in order to offer eligibility information to enrolled providers of the Division.

(72) "Emergency Department" means the part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(73) "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3)(f)(B)).

(74) "Emergency Medical Transportation" means transportation necessary for a client with an emergency medical condition, as defined in this rule, and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(75) "Emergency Services" means health services from a qualified provider necessary to evaluate or stabilize an emergency medical condition, including inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that the patient's condition is not likely to materially deteriorate from or during a client's discharge from a facility or transfer to another facility.

(76) "Evidence-Based Medicine" means the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996; 312:71-72 (13 January)).

(77) "False Claim" means a claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading or omitted information and such inaccurate, misleading or omitted information would result, or has resulted, in an overpayment.

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(77) "Family Health Insurance Assistance Program (FHIAP)" means a program in which the State subsidizes premiums in the commercial insurance market for uninsured individuals and families with income below 185% of the Federal Poverty Level.

(78) "Family Planning Services" mean services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(79) "Federally Qualified Health Center (FQHC)" means a federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as an FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(80) "Fee-for-Service Provider" means a health care provider who is not reimbursed under the terms of a Authority contract with a Coordinated Care Organization or Prepaid Health Plan (PHP). A medical provider participating in a PHP or a CCO may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP or a CCO.

(81) "Flexible Service" means a service that is an alternative or addition to a service that is as likely or more likely to effectively treat the mental condition, chemical dependency condition, or physical condition as documented in the Member's Clinical Record. Flexible Services may include, but are not limited to: Respite Care, Partial Hospitalization, Subacute Psychiatric Care, Family Support Services, Parent Psychosocial Skills Development, Peer Services, and other non-Traditional Services identified.

(82) "Flexible Service Approach" means the delivery of any Coordinated Care Service in a manner or place different from the traditional manner or place of service delivery. A Flexible Service Approach may include delivering Coordinated Care Services at alternative sites such as schools, residential facilities, nursing facilities, Members' homes, emergency rooms, offices of DHS, OHA, other community settings; offering flexible clinic hours; offering Coordinated Care Services through outreach or a home-based approach; and using peers, paraprofessionals, Community Health Workers, Peer Wellness Specialists, or Personal Health Navigators who are Culturally Competent to engage difficult-to-reach Members.

(83) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(84) "Fully Dual Eligible" means for the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Department for full medical assistance coverage.

(85) "General Assistance (GA)" means medical assistance administered and funded 100% with State of Oregon funds through OHP.

(86) "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 Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. The Division uses HCPCS codes; however, Division uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(87) "Health Care Professionals" mean individuals with current and appropriate licensure, certification or accreditation in a medical, mental health or dental profession who provide health services, assessments and screenings for clients within their scope of practice, licensure or certification.

(88) "Health Evidence Review Commission" means a commission that, among other duties, develops and maintains a list of health services ranked by priority, from the most to the least important, representing the comparative benefits of each service to the population served.

(89) "Health Insurance Portability and Accountability Act (HIPAA) of 1996 (HIPAA)" means the 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.

(90) "Health Maintenance Organization (HMO)" means a public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(91) "Health Plan New/noncategorical client (HPN)" means an individual who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet all eligibility requirements to become an OHP client.

(92) "Hearing Aid Dealer" means a person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(93) "Home Enteral Nutrition" means services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(94) "Home Health Agency" means a public or private agency or organization which has been certified by Medicare as a Medicare home health agency and which is licensed by the Authority as a home health agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(95) "Home Health Services" mean part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(96) "Home Intravenous Services" mean services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(97) "Home Parenteral Nutrition" means services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(98) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation; and currently licensed by the Oregon Health Authority (Authority), Public Health Division.

(99) "Hospital" means a facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in OHP under Title XVIII of the Social Security Act. The Division does not consider facilities certified by CMS as long-term care hospitals, long-term acute care hospitals or religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(100) "Hospital-Based Professional Services" mean professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (Division 42) report for the Division.

(101) "Hospital Dentistry" means dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR chapter 410 division 123) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(102) "Hospital Laboratory" means a laboratory providing professional technical laboratory services as outlined under laboratory services, in a hospital setting, as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to the Division.

(103) "Indian Health Care Provider" means an Indian health program or an urban Indian organization.

(104) "Indian Health Program" means any Indian Health Service (IHS) facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(105) "Indian Health Service (IHS)" means an operating division (OPDIV) within the U.S. Department of Health and Human Services (HHS) responsible for providing medical and public health services to members of federally recognized Tribes and Alaska Natives.

(106) "Indigent" means for the purposes of access to the Intoxicated Driver Program Fund (ORS 813.602) indigent has the meaning: Individuals with out health insurance coverage, public or private and meet standards for indigence adopted by the federal government as defined in ORS 813.602 (5).

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(107) "Individual Adjustment Request Form (DMAP 1036)" means form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(108) "Inpatient Hospital Services" mean services that are furnished in a hospital for the care and treatment of an inpatient. (See Division Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(109) "Institutional Level of Income Standards (ILIS)" mean three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(110) "Institutionalized" means a patient admitted to a nursing facility or hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(111) "International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (including volumes 1, 2, and 3, as revised annually)" mean a book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(112) "Laboratory" means a facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory, under the Clinical Laboratory Improvement Act (CLIA).

(113) "Laboratory Services" mean those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(114) "Licensed Direct Entry Midwife" means a practitioner who has acquired the requisite qualifications to be registered and/or legally licensed to practice midwifery by the Public Health Division.

(115) "Liability Insurance" means insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(116) "Managed Care Organization (MCO)" means contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(117) "Maternity Case Management" means a program available to pregnant clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the Division's Medical-Surgical Services Program administrative rules.

(118) "Medicaid" means a federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Authority.

(119) "Medical Assistance Eligibility Confirmation" means verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized Department or Authority representative.

(120) "Medical Assistance Program" means a program for payment of health services provided to eligible Oregonians, including Medicaid and CHIP services under the OHP Medicaid Demonstration Project, and Medicaid and CHIP services under the State Plan.

(121) "Medical Care Identification" means the card commonly called the "medical card" issued to clients.

(122) "Medical Services" mean care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating or correcting a medical problem.

(123) "Medical Transportation" means transportation to or from covered medical services.

(124) "Medically Appropriate" means services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to a Division client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(125) "Medicare" means a federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) means covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see the Division's Pharmaceutical Services program administrative rules in chapter 410, division 121.

(126) "Medicare Advantage" means an organization approved by CMS to offer Medicare health benefits plans to Medicare beneficiaries.

(127) "Medicheck for Children and Teens" mean services also known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(128) "Member" means an OHP client enrolled with a pre-paid health plan or coordinated care organization.

(129) "Mental Health Case Management" means services provided to CCO members who require assistance to ensure access to mental health benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the CCO member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring CCO members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services.

(130) "National Correct Coding Initiative (NCCI)" means the Centers for Medicare and Medicaid Services (CMS) developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment.

(131) "National Drug Code or (NDC)" means a universal number that identifies a drug. The NDC number consists of 11 digits in a 5-4-2 format. The Food and Drug Administration assigns the first five digits to identify the manufacturer of the drug. The manufacturer assigns the remaining digits to identify the specific product and package size. Some packages will display less than 11 digits, but the number assumes leading zeroes.

(132) "National Provider Identification (NPI)" means federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(133) "Naturopathic physician" means a person licensed to practice naturopathic medicine by the Oregon Board of Naturopathic Medicine.

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(134) "Naturopathic Services" means services provided within the scope of practice as defined under State law and by rules of the Oregon Board of Naturopathic Medicine..

(135) "Non-covered Services" mean services or items for which the Authority is not responsible for payment or reimbursement. Non-covered services are identified in:

- (a) OAR 410-120-1200, Excluded Services and Limitations; and
- (b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;
- (c) 410-141-0480, OHP Benefit Package of Covered Services;
- (d) 410-141-0520, Prioritized List of Health Services; and
- (e) Any other applicable Division administrative rules.

(136) "Non-Paid Provider" means a provider who is issued a provider number for purposes of data collection or non-claims-use of the Provider Web Portal (e.g., eligibility verification).

(137) "Nurse Anesthetist, C.R.N.A." means a registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(138) "Nurse Practitioner" means a person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(139) "Nurse Practitioner Services" mean services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(140) "Nursing Facility" means a facility licensed and certified by the Department SPD and defined in OAR 411-070-0005.

(141) "Nursing Services" mean health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(142) "Nutritional Counseling" means counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(143) "Occupational Therapist" means a person licensed by the State Board of Examiners for Occupational Therapy.

(144) "Occupational Therapy" means the functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(145) "Ombudsman Services" mean advocacy services provided by the Authority to clients whenever the client is reasonably concerned about access to, quality of or limitations on the health services provided.

(146) "Oregon Health Plan (OHP)" means the Medicaid and Children's Health Insurance (CHIP) Demonstration Project which expands Medicaid and CHIP eligibility beyond populations traditionally eligible for Medicaid to other low-income populations, and Medicaid and CHIP services under the State Plan

(147) "Optometric Services" mean services provided, within the scope of practice of optometrists as defined under State law.

(148) "Optometrist" means a person licensed to practice optometry pursuant to State law.

(149) "Oregon Health Authority (Authority or OHA)" means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, the agencies under the authority of the OHA are the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(150) "Oregon Youth Authority (OYA)" means the state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(151) "Out-of-State Providers" mean any provider located outside the borders of the State of Oregon:

- (a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;
- (b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(152) "Outpatient Hospital Services" mean services that are furnished in a hospital for the care and treatment of an outpatient. For information on outpatient-covered services, see the Division's Hospital Services administrative rules found in chapter 410, division 125.

(153) "Overdue Claim" means a valid claim that is not paid within 45 days of the date it was received.

(154) "Overpayment" means payment(s) made by Authority to a provider in excess of the correct Authority payment amount for a service. Overpayments are subject to repayment to the Authority.

(155) "Overuse" means use of medical goods or services at levels determined by Authority medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(156) "Paid Provider" means a provider who is issued a provider number for purposes of submitting medical assistance program claims for payment by the Authority.

(157) "Panel" means the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(158) "Payment Authorization" means authorization granted by the responsible agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(159) "Peer Review Organization (PRO)" means an entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(160) "Pharmaceutical Services" mean services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(161) "Pharmacist" means a person licensed to practice pharmacy pursuant to state law.

(162) "Physical Capacity Evaluation" means an objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(163) "Physical Therapist" means a person licensed by the relevant State licensing authority to practice Physical Therapy.

(164) "Physical Therapy" means treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(165) "Physician" means a person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government. A physician may be an individual licensed under ORS 677 or ORS 685.

(166) "Physician Assistant" means a person licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(167) "Physician Services" mean services provided, within the scope of practice as defined under state law, by or under the personal supervision of a physician.

(168) "Podiatric Services" mean services provided within the scope of practice of podiatrists as defined under state law.

(169) "Podiatrist" means a person licensed to practice podiatric medicine pursuant to state law.

(170) "Post-Payment Review" means review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(171) "Practitioner" means a person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(172) "Premium Sponsorship" means premium donations made for the benefit of one or more specified Division clients (See 410-120-1390).

(173) "Prepaid Health Plan (PHP)" means a managed health, dental, chemical dependency, or mental health organization that contracts with the Authority on a case managed, prepaid, capitated basis under OHP. PHPs may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(174) "Primary Care Dentist (PCD)" means a dental practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for their members.

(176) "Primary Care Provider (PCP)" means any enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. PCPs initiate referrals for care outside their scope of prac-

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tice, consultations and specialist care, and assure the continuity of medical-ly appropriate client care.

(177) "Prior Authorization (PA)" means payment authorization for specified medical services or items given by Authority staff, or its contracted agencies prior to provision of the service. A physician referral is not a PA.

(178) "Prioritized List of Health Services" means the listing of conditions and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP.

(179) "Private Duty Nursing Services" mean nursing services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's physician to an individual who is not in a health care facility.

(180) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a rendering provider, or bills, obligates and receives reimbursement on behalf of a rendering provider of services, also termed a billing provider (BP). The term provider refers to both rendering providers and BP(s) unless otherwise specified.

(181) "Provider Organization" means a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility or organization;

(e) If such entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent. (See Subparts of Provider Organization).

(182) "Public Health Clinic" means a clinic operated by a county government.

(183) "Public Rates" mean the charge for services and items that providers, including Hospitals and nursing facilities, made to the general public for the same service on the same date as that provided to Authority clients.

(184) "Qualified Medicare Beneficiary (QMB)" means a Medicare beneficiary, as defined by the Social Security Act and its amendments.

(185) "Qualified Medicare and Medicaid Beneficiary (QMM)" means a Medicare beneficiary who is also eligible for Division coverage.

(186) "Quality Improvement" means the efforts to improve the level of performance of a key process or processes in health services or health care.

(187) "Quality Improvement Organization (QIO)" means an entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a Peer Review Organization.

(188) "Radiological Services" mean those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, Hospital, or independent radiological facility.

(189) "Recipient" means a person who is currently eligible for medical assistance (also known as a client).

(190) "Recreational Therapy" means recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(191) "Recoupment" means an accounts receivable system that collects money owed by the provider to the Authority by withholding all or a portion of a provider's future payments.

(192) "Referral" means the transfer of total or specified care of a client from one provider to another. As used by the Authority, the term referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or the Authority.

(193) "Remittance Advice (RA)" means the automated notice a provider receives explaining payments or other claim actions. It is the only notice sent to providers regarding claim actions.

(194) "Request for Hearing" means a clear expression, in writing, by an individual or representative that the person wishes to appeal a Department or Authority decision or action and wishes to have the decision considered by a higher authority.

(195) "Representative" means an individual who can make OHP-related decisions for a client who is not able to make such decisions themselves.

(196) "Retroactive Medical Eligibility" means eligibility for medical assistance granted to a client retroactive to a date prior to the client's application for medical assistance.

(197) "Rural" means a geographic area that is 10 or more map miles from a population center of 30,000 people or less.

(198) "Sanction" means an action against providers taken by the Authority in cases of fraud, misuse or abuse of Division requirements.

(199) "School Based Health Service" means a health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a physician or other licensed practitioner.

(200) "Service Agreement" means an agreement between the Authority and a specified provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service agreements do not preclude the requirement for a provider to enroll as a provider.

(201) "Sliding Fee Schedule" means a fee schedule with varying rates established by a provider of health care to make services available to indigent and low-income individuals. The sliding-fee schedule is based on ability to pay.

(202) "Social Worker" means a person licensed by the Board of Clinical Social Workers to practice clinical social work.

(203) "Speech-Language Pathologist" means a person licensed by the Oregon Board of Examiners for Speech Pathology.

(204) "Speech-Language Pathology Services" mean the application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(205) "State Facility" means a Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(206) "Subparts (of a Provider Organization)" mean for NPI application, subparts of a health care provider organization would meet the definition of health care provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(207) "Subrogation" means Right of the State to stand in place of the client in the collection of third party resources (TPR).

(208) "Supplemental Security Income (SSI)" means a program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(209) "Surgical Assistant" means a person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(210) "Suspension" means a sanction prohibiting a provider's participation in the medical assistance programs by deactivation of the provider's Authority-assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(211) "Targeted Case Management (TCM)" means activities that will assist the client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services are often provided by Allied Agency providers.

(212) "Termination" means a sanction prohibiting a provider's participation in the Division's programs by canceling the provider's Authority-assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Authority at the time of termination.

ADMINISTRATIVE RULES

(213) “Third Party Liability (TPL) or Third Party Resource (TPR)” means a medical or financial resource which, under law, is available and applicable to pay for medical services and items for a Authority client.

(214) “Transportation” means Medical Transportation.

(215) “Type A Hospital” means a hospital identified by the Office of Rural Health as a Type A hospital.

(216) “Type B AAA” means an AAA administered by a unit or combination of units of general purpose local government for overseeing Medicaid, financial and adult protective services and regulatory programs for the elderly or the elderly and disabled.

(217) “Type B AAA Unit” means a Type B AAA funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(218) “Type B Hospital” means a hospital identified by the Office of Rural Health as a Type B hospital.

(219) “Urban” means a geographic area that is less than 10 map miles from a population center of 30,000 people or more.

(220) “Urgent Care Services” mean health services that are medical-appropriate and immediately required to prevent serious deterioration of a client’s health that are a result of unforeseen illness or injury.

(221) “Usual Charge (UC)” means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider’s charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month’s charges;

(b) The provider’s lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to third party resources (TPR) are to be considered.

(222) “Utilization Review (UR)” means the process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(223) “Valid Claim” means an invoice received by the Division or the appropriate Authority/Department office for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(224) “Vision Services” mean provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

Stat. Auth.: ORS 413.042 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007 f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

410-120-0025

Administration of Division of Medical Assistance Programs, Regulation and Rule Precedence

(1) The Oregon Health Authority (Authority) and its Division of Medical Assistance Programs (Division), may adopt reasonable and lawful policies, procedures, rules and interpretations to promote the orderly and efficient administration of medical assistance programs including the

Oregon Health Plan pursuant to ORS 414.065 (generally, fee-for-service), 414.651(Prepaid Health Plans), and 414.115 to 414.145 (services contracts) subject to the rulemaking requirements of Oregon Revised Statutes and Oregon Administrative Rule (OAR) procedures.

(2) In applying its policies, procedures, rules and interpretations, the Division will construe them as much as possible to be complementary. In the event that Division policies, procedures, rules and interpretations may not be complementary, the Division will apply the following order of precedence to guide its interpretation:

(a) For purposes of the provision of covered medical assistance to Division clients, including but not limited to authorization and delivery of service, or denials of authorization or services, the Division, clients, enrolled providers and the Prepaid Health Plans will apply the following order of precedence:

(A) Those federal laws and regulations governing the operation of the medical assistance program and any waivers granted the Division by the Centers for Medicare and Medicaid Services to operate medical assistance programs including the Oregon Health Plan;

(B) Oregon Revised Statutes governing medical assistance programs;

(C) Generally for Prepaid Health Plans, requirements applicable to the provision of covered medical assistance to Division clients are provided in OAR 410-141-0000 through 410-141-0860, Oregon Health Plan Administrative Rules for Prepaid Health Plans, inclusive, and where applicable, Division General Rules, 410-120-0000 through 410-120-1980, and the provider rules applicable to the category of medical service;

(D) Generally for enrolled fee-for-service providers or other contractors, requirements applicable to the provision of covered medical assistance to Division clients are provided in Division General Rules, OAR 410-120-0000 through 410-120-1980, the Prioritized List and program coverage described in 410-141-0480 to 410-141-0520, and the provider rules applicable to the category of medical service;

(E) Any other applicable duly promulgated rules issued by the Division and other offices or units within the Oregon Health Authority or Department of Human Services necessary to administer the State of Oregon’s medical assistance programs, such as electronic data transaction rules in OAR 407-120-0100 to 407-120-0200; and

(F) The basic framework for provider enrollment in OAR 407-120-0300 through 407-120-0380 generally apply to providers enrolled with the Authority or Department, subject to more specific requirements applicable to the administration of the Oregon Health Plan and medical assistance programs administered by the Authority. For purposes of this rule, “more specific” means the requirements, laws and rules applicable to the provider type and covered services described in subsections (A) – (E) of this section.

(b) For purposes of contract administration solely as between the Authority and its Prepaid Health Plans, the terms of the applicable contract and the requirements in subsection (2)(a) of this rule applicable to the provision of covered medical assistance to Division clients.

(A) Nothing in this rule shall be deemed to incorporate into contracts provisions of law not expressly incorporated into such contracts, nor shall this rule be deemed to supersede any rules of construction of such contracts that may be provided for in such contracts.

(B) Nothing in this rule gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to any person or entity unless such person or entity is identified by name as a named party to the contract.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 6-2008(Temp), f. & cert. ef. 3-14-08 thru 9-1-08; DMAP 11-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

410-120-0250

PHP or Coordinated Care Organizations

(1) The Authority provides clients with health services, through contracts with a Prepaid Health Plan (PHP) or a Coordinated Care Organization (CCO).

(2) The PHP or CCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law, the PHP or CCO’s contract with the Authority and the OHP administrative rules governing PHPs and CCOs (OAR 410 division 141).

(3) All PHP or CCOs are required to provide benefit coverage pursuant to OAR 410-120-1210 and 410-141-0480 through 410-141-0520, however, authorization criteria may vary between PHP or CCOs. It is the providers’ responsibility to comply with the PHP or CCO’s Prior Authorization requirements or other policies necessary for reimbursement from the PHP or CCO, before providing services to any OHP client enrolled in a PHP or CCO.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.019, 414.025, 414.065, 414.725 & 414.737
Hist.: OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 67-2005, f. 12-21-05, cert. ef. 1-1-06; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

410-120-1260

Provider Enrollment

(1) This rule applies to providers enrolled with, or seeking to enroll with the Division of Medical Assistance Programs (Division).

(2) Providers signing the Provider Enrollment Agreement constitutes agreement to comply with all applicable Division provider rules and federal and state laws and regulations.

(3) Providers enrolled by the Division include:

(a) Non-payable provider means a provider who is issued a provider number for purposes of data collection or non-claims-use, such as but not limited to:

(A) Ordering or referring providers, whose only relationship with the Division is to order, refer, or prescribe services for Division clients;

(B) A billing agent or billing service submitting claims or providing other business services on behalf of a provider but not receiving payment in the name of or on behalf of the provider;

(C) Encounter only provider: A provider contracted with a PHP or CCO.

(4) A payable provider means a provider who is issued a provider number for purpose of submitting health care claims for reimbursement from the Division. A payable provider may be:

(a) The rendering provider:

(b) An individual, agent, business, corporation, clinic, group, institution, or other entity who, in connection with the submission of claims, receives or directs the payment on behalf of a rendering provider;

(5) When an entity is receiving or directing payment on behalf of the rendering provider, the Billing provider must:

(a) Meet one of the following standards as applicable:

(A) Have a relationship with the rendering provider described in 42 CFR 447.10(g), and have the authority to submit the rendering provider enrollment application and supporting documentation on behalf of the rendering provider;

(B) Is a contracted billing agent or billing service that has enrolled with the Division to provide services in connection with the submission of claims and to receive or direct payment in the name of the rendering provider pursuant to 42 CFR 447.10(f).

(b) Maintain, and make available to Division, upon request, records indicating the Billing provider's relationship with the rendering provider(s). This includes:

(A) At the time of enrollment, identify all rendering providers for whom they bill, or receive or direct payments;

(B) Notify the Division within 30 days of a change to the rendering providers' name, date of birth, address, Division provider numbers, NPIs, Social Security Number (SSN) or the Employer Identification Number (EIN).

(c) Prior to submission of any claims or receipt or direction of any payment from the Division, signed confirmation from the rendering provider(s) that the billing entity or provider has been authorized by the rendering provider to submit claims or receive or direct payment on behalf of the rendering provider. This authorization, and any limitations or termination of such authorization, must be maintained in the provider's files for at least five years, following the submission of claims or receipt or direction of funds from the Division.

(6) In order to facilitate timely claims processing and claims payment consistent with applicable privacy and security requirements for providers:

(a) The Division requires non-payable and payable providers to be enrolled consistent with the provider enrollment process described in this rule:

(b) If the rendering provider uses electronic media to conduct transactions with the Division, or authorizes a non-payable provider (e.g., billing service or billing agent) to conduct such electronic transactions, the rendering provider must comply with the Authority Electronic Data Interchange (EDI) rules, OAR 943-120-0100 through 943-120-0200. Enrollment as a payable or non-payable provider is a necessary requirement for submitting electronic claims, but the provider must also register as an EDI trading partner and identify the EDI submitter in order to submit electronic claims.

(7) To be enrolled and able to bill as a provider, an individual or organization must:

(a) Meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations and rules;

(b) Comply with all Oregon statutes and regulations for provision of Medicaid and CHIP services;

(c) If providing services within the State of Oregon, 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 Indian Health Service facility meeting enrollment requirements will be accepted on the same basis as any other qualified provider. However, when State licensure is normally required, the facility need not obtain a license but must meet all applicable standards for licensure.

(9) An individual or organization that is currently subject to sanction(s) by the Division, another state's Medicaid program, or federal government is not eligible for enrollment (see OAR 410-120-1400, 943-120-0360, Provider Sanctions).

(9) Required information: All Providers must meet the following requirements before the Division can issue or renew a provider number, or at any time upon written request by the Division:

(a) Disclosure requirements: The provider must disclose to the Division:

(A) The identity of any person, employed by the provider, who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or CHIP program in the last 10 years;

(B) If the provider is an entity other than an individual practitioner or group of practitioner's:

(i) The name, date of birth, address and tax identification number of each person with an ownership or control interest in the provider, or in any subcontractor in which the provider has a direct or indirect ownership interest of 5 percent or more. When disclosing tax identification numbers:

(I) For corporations, use the federal Tax Identification Number;

(II) For individuals in a solo practice or billing as an individual practitioner, use the Social Security Number (SSN);

(III) All other providers use the Employer Identification Number (EIN);

(IV) The SSN or EIN of the rendering provider cannot be the same as the Tax Identification Number of the billing provider;

(V) Pursuant to 42 CFR 433.37, including federal tax laws at 26 USC 6041, SSN's and EIN's provided are used for the administration of federal, state, and local tax laws and the administration of this program for internal verification and administrative purposes including but not limited to identifying the provider for payment and collection activities;

(ii) Whether any of the persons so named:

(I) Is related to another as spouse, parent, child, sibling or other family members by marriage or otherwise; and

(II) Has an ownership or control interest in any other entity.

(C) A provider must submit, within 35 days of the date of a request, full and complete information about the ownership of any subcontractor with whom the provider has 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 5-year period ending on the date of the request.;

(b) Provider screening and enrollment requirements: The provider must submit the following information to the Division:

(A) For non-payable providers, a complete Non-Paid Provider Enrollment Request;

(B) For payable providers, a complete Provider Enrollment Request, Provider Enrollment Attachment, Disclosure Statement and Provider Enrollment Agreement;

(C) Application fee if required under 42 CFR 455.460;

(D) Consent to criminal background check when required;

(E) To fulfill federal provider screening requirements pursuant to 42 CFR 455.436, upon request, the name, date of birth, address, Division provider numbers, NPIs, and Social Security Number (SSN) of any provider who is enrolled or seeking enrollment with DMAP.

(c) Verification of licensing or certification. Loss of the appropriate licensure or certification will result in immediate disenrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification;

(d) Required updates: Enrolled providers must notify the Division in writing of material changes in any status or condition that relates to their qualifications or eligibility to provide medical assistance services including but not limited to those listed in this subsection;

(A) Failure to notify the Division of a change of Federal Tax Identification Number for entities or a Social Security Number or Employer

ADMINISTRATIVE RULES

Identification Number for individual rendering providers may result in the imposition of a \$50 fine;

(i) If the Division notifies a provider about an error in their Federal Tax Identification, including Social Security Numbers or Employer Identification Numbers for individual rendering providers, the provider must supply the appropriate valid Federal Tax Identification Number within 30 calendar days of the date of the Division's notice.

(ii) Failure to comply with this requirement may result in the Division imposing a fine of \$50 for each such notice. Federal Tax Identification requirements described in this rule refer to any such requirements established by the Internal Revenue Service;

(B) Changes in business affiliation, ownership, NPI and Federal Tax Identification Number, ownership and control information, or criminal convictions.

(i) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation.

(C) In the event of bankruptcy proceedings, the provider must immediately notify the Division Administrator in writing;

(D) Claims submitted by, or payments made to, providers who have not furnished the notification required by this rule or to a provider that has failed to submit a new application as required by the Division under this rule may be denied or recovered.

(10) Rendering providers may be enrolled retroactive to the date services were provided to a Division client only if:

(a) The provider was appropriately licensed, certified and otherwise met all Division requirements for providers at the time services were provided; and

(b) Services were provided less than 12 months prior to the date the application for provider status was received by the Division as evidenced by the first date stamped on the paper claim(s) submitted with the application materials for those services, either manually or electronically;

(c) The Division reserves the right to retroactively enroll the provider prior to the 12-month period based upon extenuating circumstances outside the control of the provider, consistent with federal Medicaid regulations, and with approval of the Division's Provider Enrollment Unit Manager.

(11) Provider numbers:

(a) Oregon Medicaid provider number: The Division issues provider numbers to establish an individual or organization's enrollment as an Oregon Medicaid provider;

(A) This number designates specific category(ies) of services covered by the Division Provider Enrollment Attachment. For example, a pharmacy provider number applies to pharmacy services but not to durable medical equipment, which requires a separate provider application attachment and establishes a separate Oregon Medicaid provider number;

(B) For providers not subject to NPI requirements, this number is the provider identifier for billing the Division;

(b) National Provider Identifier (NPI) and taxonomy: The Division requires compliance with NPI requirements in 45 CFR Part 162. For providers subject to NPI requirements:

(A) The NPI and taxonomy codes are the provider identifier for billing the Division;

(B) Currently enrolled providers that obtain a new NPI are required to update their records with the Division's Provider Enrollment Unit;

(C) Provider applicants must obtain an NPI and include it in their provider enrollment request to the Division.

(12) Enrollment of Out-of-State providers: Providers of services outside the State of Oregon will be enrolled as a provider if they comply with the requirements OAR 410-120-1260 and under the following conditions:

(a) The provider is appropriately licensed or certified and meets standards for participation in the Medicaid program. Disenrollment or sanction from other state's Medicaid program, or exclusion from any other federal or state health care program is a basis for disenrollment, termination or suspension from participation as a provider in Oregon's medical assistance programs;

(b) Noncontiguous Out-of-State pharmacy providers must be licensed by the Oregon Board of Pharmacy to provide pharmacy services in Oregon. In instances where clients are out of the state due to travel or other circumstances that prevent them from using a pharmacy licensed in Oregon, and prescriptions need to be filled, the pharmacy is required to be licensed in the State they are doing business where the client filled the prescription, and must be enrolled with the Division in order to submit claims. Out-of-state internet or mail order, except the Division's mail order vendor, prescriptions are not eligible for reimbursement;

(c) The provider bills only for services provided within the provider's scope of licensure or certification;

(d) For noncontiguous out-of-State providers, the services provided must be authorized, in the manner required under these rules for out-of-State Services (OAR 410-120-1180) or other applicable Authority rules:

(A) The services provided are for a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous area of Oregon; or

(B) For foster care or subsidized adoption children placed out of state; or

(C) The provider is seeking Medicare deductible or coinsurance coverage for Oregon Qualified Medicare Beneficiaries (QMB) clients.

(D) The services for which the provider bills are covered services under the Oregon Health Plan (OHP);

(e) Facilities, including but not restricted to hospitals, rehabilitative facilities, institutions for care of individuals with mental retardation, psychiatric hospitals, and residential care facilities, will be enrolled as providers only if the facility is enrolled as a Medicaid provider in the state in which the facility is located or is licensed as a facility provider of services by the State of Oregon;

(f) Out-of-State providers may provide contracted services per OAR 410-120-1880.

(g) Out-of-state billing providers may need to register with the Secretary of State and the Department of Revenue to transact business in Oregon pursuant to 943-120-0320(15)(f).

(13) Absentee Physicians: When a substitute physician is retained to take over another physician's professional practice while he or she is absent or unavailable, the following shall apply:

(a) The Division recognizes that absentee physicians may retain substitute physicians as a locum tenens or as part of a reciprocal billing arrangement. For purposes of this rule:

(A) A "locum tenens" means a substitute physician retained to take over another physician's professional practice while he or she is absent (i.e., absentee physician) for reasons such as illness, vacation, continuing medical education, pregnancy, etc;

(B) A locum tenens cannot be retained to take over a deceased physician's professional practice without becoming enrolled with the Division;

(C) A "reciprocal billing arrangement" means a substitute physician retained on an occasional basis;

(b) Substitute physicians are not required to enroll with the Division; however, the Division may enroll such providers at the discretion of the Division's Provider Enrollment manager if the provider submits all information required for provider enrollment as described in this rule;

(c) In no instance may an enrolled absentee physician utilize a substitute physician who is, at that time, excluded from participation in or under sanction by Medicaid or federally funded or federally assisted health programs;

(d) The absentee physician must be an enrolled Division provider and must bill with their individual Division assigned provider number and receive payment for covered services provided by the substitute physician.

(A) Services provided by the locum tenens must be billed with a modifier Q6;

(B) Services provided in a reciprocal billing arrangement by the substitute physician must be billed with a modifier Q5;

(C) In entering the Q5 or Q6 modifier, the absentee physician is certifying that the services are provided by a substitute physician identified in a record of the absentee physician that is available for inspection, and are services for which the absentee physician is authorized to submit a claim;

(D) A physician or other person who falsely certifies that the requirements of this section are met may be subject to possible civil and criminal penalties for fraud, and the enrolled provider's right to receive payment or to submit claims may be revoked.

(e) These requirements do not apply to substitute arrangements among physicians in the same medical practice when claims are submitted in the name of the practice or group name.

(f) Nothing in this rules prohibits physicians sharing call responsibilities from opting out of the substitute provider arrangement(s) described in this rule and submitting their own claims for services provided, as long as all such physicians are themselves enrolled rendering providers and as long as duplicate claims for services are not submitted.

(14) Provider termination:

(a) The provider may terminate enrollment at any time. The request must be in writing, and signed by the provider. The notice shall specify the Division assigned provider number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate

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any obligations of the provider for dates of services during which the enrollment was in effect;

(b) The Division may terminate or suspend providers when a provider fails to meet one or more of the requirements governing a provider's participation in Oregon's medical assistance programs, such as but not limited to:

(A) Breaches of provider agreement;

(B) Failure to submit timely and accurate information as requested by the Division;

(C) Failure to submit fingerprints in a form determined by the Division within 30 days of request;

(D) Failure to permit access to provider locations for site visits;

(E) Failure to comply with Federal or State statutes and regulations, or policies of the Division that are applicable to the provider;

(F) No claims have been submitted in an 18-month period. The provider must reapply for enrollment;

(G) Any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid CHIP or the Title XX services program in the last 10 years;

(H) Failure to fully and accurately make any disclosure required under this section (9) of this rule.

(15) If a provider's enrollment in the OHP program is denied, suspended or terminated or a sanction is imposed under this rule, the providers may request a contested case hearing pursuant to OAR 410-120-1600 and 410-120-1860.

(16) The provision of health care services or items to Division clients is a voluntary action on the part of the provider. Providers are not required to serve all Division clients seeking service.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0060; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 73-1989, f. & cert. ef. 12-7-89; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0063, 461-013-0075 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 51-1991(Temp), f. 11-29-91, cert. ef. 12-1-91; HR 5-1992, f. & cert. ef. 1-16-92; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0020, 410-120-0040 & 410-120-0060; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 9-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

410-120-1340

Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients. Any contracted billing agent or billing service submitting claims on behalf of a provider but not receiving payment in the name of or on behalf of the provider does not meet the requirements for billing provider enrollment. If billing agents and billing services intend to submit electronic transactions they must register and comply with the Oregon Health Authority (Authority) Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. Division reimbursement for services may be subject to review prior to reimbursement.

(2) The Division (Division of Medical Assistance Programs or another Division within the Authority) that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(3) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules;

(4) Amount billed may not exceed the provider's "usual charge" (see definitions);

(5) The Division's maximum allowable rate setting process uses the following methodology. The rates are updated periodically and posted on

the Authority web site at http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the Division shall use the 2010 Transitional Total RVU weights published in the Federal Register, Vol. 74, November 25, 2009 with technical corrections published Dec. 10, 2009, to be effective for dates of services on or after January 1, 2011.

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight shall be adopted;

(B) For professional services typically performed in a facility the Transitional Facility Total RVU weight shall be adopted;

(b) The Division applies the following conversion factors:

(A) \$41.61 for labor and delivery codes (59400-59622);

(B) \$27.82 for primary care providers and services. A current list of primary care CPT, HCPCS and provider specialty codes is available at http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml

(C) \$26.00 for all remaining RVU weight based CPT/HCPCS codes;

(D) \$26.81 for vision codes (92340-92342 and 92352-92353) regardless of the RVU.

(6) Other non RVU based rates:

(a) Surgical assist reimburses at 20% of the surgical rate;

(b) \$21.20 is the base rate for anesthesia service codes 00100-01996.

The rate is based on per unit of service;

(c) Clinical lab codes are priced at 70% of the Medicare clinical lab fee schedule;

(d) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80% of the Medicare fee schedule;

(e) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25%. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(f) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling.

(g) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Division's Hospital Services Program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, shall not exceed any upper limits established by federal regulation.

(8) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(9) Payment rates for in-home services provided through Department of Human Services (Department) Aged and Physically Disabled Division (APD) will not be greater than the current Division rate for nursing facility payment.

(10) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(11) The Division shall not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(12) The Division shall not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules, (chapter 410, division 148);

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(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules, (chapter 410, division 129 and 131);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services Program administrative rules, (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services Program administrative rules, (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services Program rules, (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122).

(13) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment will not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(14) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount, less the Medicare payment, up to the Medicare co-insurance and deductible, whichever is less. The Division's payment cannot exceed the co-insurance and deductible amounts due;

(b) The Division pays the Division allowable rate for Division covered services that are not covered by Medicare.

(15) For clients with third-party resources (TPR), the Division pays the Division allowed rate less the TPR payment but not to exceed the billed amount.

(16) The Division payments, including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(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 individual provider rules.

(17) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742, 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-78; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

410-120-1395

Program Integrity

(1) The Oregon Health Authority (Authority) uses several approaches to promote program integrity. These rules describe program integrity actions related to provider payments. Our program integrity goal is to pay the correct amount to a properly enrolled provider for covered, medically appropriate services provided to an eligible client according to the client's benefit package of health care services in effect on the date of service.

Types of program integrity activities include but are not limited to the following activities:

(a) Medical review and prior authorization processes, including all actions taken to determine the medical appropriateness of services or items;

(b) Provider obligations to submit correct claims;

(c) Onsite visits to verify compliance with standards;

(d) Implementation of Health Insurance Portability and Accountability Act (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 database (exclusions);

(g) Quality improvement activities;

(h) Cost report settlement processes;

(i) Audits;

(j) Investigation of fraud or prohibited kickback relationships;

(k) Coordination with the Department of Justice Medicaid Fraud Control Unit (MFCU) and other health oversight authorities.

(2) Providers must maintain clinical, financial and other records, capable of being audited or reviewed, consistent with the requirements of OAR 410-120-1360, Requirements for Financial, Clinical and Other Records, in the General Rules Program, the Oregon Health Plan administrative rules, and the rules applicable to the service or item.

(3) The following people may review a request for services or items, or audit a claim for care, services or items, before or after payment, for assurance that the specific care, item or service was provided in accordance with the Division of Medical Assistance Program's (Division) rules and the generally accepted standards of a provider's field of practice or specialty:

(a) Authority, Department staff or designee; or

(b) Medical utilization and review contractor; or

(c) Dental utilization and review contractor; or

(d) Federal or state oversight authority.

(4) 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 Division 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 will also be denied or subject to recovery.

(5) When the Authority determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(6) The Authority may communicate with and coordinate any program integrity actions with the MFCU, DHHS, and other federal and state oversight authorities.

(7) The Authority must notify HHS-OIG within 20 working days of any disclosures from the date it receives the information, or takes any adverse action to limit the ability of an individual or entity to participate in its program as provided in 42 CFR 1002.3(b). This includes, but is not limited to, suspension, denials, terminations, settlement agreements and situations where an individual or entity voluntarily with draws from the program to avoid a formal sanction.

(8) When the Authority initiates an exclusion under § 1002.210, it must notify the individual or entity subject to the exclusion and other state agencies, the state medical licensing board, the public, beneficiaries, and others as provided in § 1001.2005 and § 1001.2006.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.019, 414.025 & 414.065

Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

410-120-1860

Contested Case Hearing Procedures

(1) These rules apply to all contested case hearings provided by the Division of Medical Assistance Programs (Division) involving a client's medical or dental benefits, except as otherwise provided in OAR 410-141-0263. The hearings are conducted in accordance with the Attorney General's model rules at 137-003-0501 and following. When the term "agency" is used in the Attorney General's model rules, it shall refer to the Division for purposes of this rule Except for 137-003-0528(1)(a), the method described in 137-003-0528(8)-(10) is used in computing any period of time prescribed in this division of rules (OAR 410 division 120) applicable to timely filing of client requests for hearing. Due to operational conflicts, the procedures needing revision and the expense of doing so, 137-003-0528(1)(a), which allows hearing requests to be treated as timely based on the date of postmark, does not apply to Division contested cases.

(2) Medical provider appeals and administrative reviews involving the Division are governed by OAR 410-120-1560 through 410-120-1700.

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(3) Complaints and appeals for clients requesting or receiving medical assistance from a Prepaid Health Plan (PHP) shall be governed exclusively by the procedures in OAR 410-141-0260. This rule describes the procedures applicable when those clients request and are eligible for a Division contested case hearing.

(4) Contested Case Hearing Requests:

(a) A client has the right to a contested case hearing in the following situations upon the timely completion of a request for a hearing:

(A) The Authority acts to deny client services, payment of a claim, or to terminate, discontinue or reduce a course of treatment, or issues related to disenrollment in a Fully Capitated Health Plan (FCHP), Physician Care Organization (PCO), Dental Care Organization (DCO) or Chemical Dependency Organization (CDO); or

(B) The right of a client to request a contested case hearing is otherwise provided by statute or rule, including OAR 410-141-0264(10) describing when a client of a PHP may request a state hearing.

(b) To be timely, a request for a hearing is complete when the Division receives the Authority's Administrative Hearing request form (DMAP 443) not later than the 45th day following the date of the decision notice;

(c) In the event a request for hearing is not timely, the Division will determine whether the failure to timely file the hearing request was caused by circumstances beyond the control of the client and enter an order accordingly. In determining whether to accept a late hearing request, the Division requires the request to be supported by a written statement that explains why the request for hearing is late. The Division may conduct such further inquiry as the Division deems appropriate. In determining timeliness of filing a hearing request, the amount of time that the Division determines accounts for circumstances beyond the control of the client is not counted. The Division may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness;

(d) In the event the claimant has no right to a contested case hearing on an issue, the Division may enter an order accordingly. The Division may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has a right to a contested case hearing;

(e) A client who requests a hearing shall be referred to as a claimant. The parties to a contested case hearing are the claimant and, if the claimant has requested a hearing about a decision of a PHP, the claimant's PHP;

(f) A client may be represented by any of the persons identified in ORS 183.458. A PHP that is a corporation may be represented by any of the persons identified in ORS 410.190.

(5) Expedited hearings:

(a) A claimant who feels his or her medical or dental problem cannot wait for the normal review process may be entitled to an expedited hearing;

(b) Expedited hearings are requested using Authority Form 443;

(c) Division staff will request all relevant medical documentation and present the documentation obtained in response to that request to the Division Medical Director or the Medical Director's designee for review. The Division Medical Director or the Medical Director's designee will decide if the claimant is entitled to an expedited hearing within, as nearly as possible, two working days from the date of receiving the documentation applicable to the request;

(d) An expedited hearing will be allowed, if the Division Medical Director or the Medical Director's designee, determines that the claimant has a medical condition which is an immediate, serious threat to claimant's life or health and claimant has been denied a medical service.

(6) Informal conference:

(a) The Division hearing representative and the claimant, and their legal representative if any, may have an informal conference, without the presence of the Administrative law Judge (ALJ), to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Division and the claimant to settle the matter;

(B) Provide an opportunity to make sure the claimant understands the reason for the action that is subject of the hearing request;

(C) Give the claimant and the Division an opportunity to review the information that is the basis for that action;

(D) Inform the claimant of the rules that serve as the basis for the contested action;

(E) Give the claimant and the Division the chance to correct any misunderstanding of the facts;

(F) Determine if the claimant wishes to have any witness subpoenas issued for the hearing; and

(G) Give the Division an opportunity to review its action.

(b) The claimant may, at any time prior to the hearing date, request an additional informal conference with the Authority representative, which may be granted if the Authority representative finds, in his or her sole discretion, that the additional informal discussion will facilitate the hearing process or resolution of disputed issues;

(c) The Division may provide to the claimant the relief sought at any time before the Final Order is served;

(d) Any agreement reached in an informal conference shall be submitted to the ALJ in writing or presented orally on the record at the hearing.

(7) A claimant may withdraw a hearing request at any time. The withdrawal is effective on the date it is received by the Division or the ALJ, whichever is first. The ALJ will send a Final Order confirming the withdrawal to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth calendar day following the date such an order is effective.

(8) Contested case hearings are closed to non-participants in the hearing.

(9) Proposed and Final Orders:

(a) In a contested case, an ALJ assigned by the Office of Administrative Hearings will serve a proposed order on all parties and the Division, unless, prior to the hearing, the Division notifies the ALJ that a final order may be served. The proposed order issued by the ALJ will become a final order if no exceptions are filed within the time specified in subsection (b) unless the Division notifies the parties and the ALJ that the Division will issue the final order;

(b) If the ALJ issues a proposed order, and a party adversely affected by the proposed order may file exceptions to the proposed order or present argument for the Division's consideration:

(A) The exceptions must be in writing and reach the Division not later than 10 working days after date the proposed order is issued by the ALJ;

(B) After receiving the exceptions, if any, the Division may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Authority will issue an amended proposed order.

(10) A hearing request is dismissed by order when neither the party nor the party's legal representative, if any, appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Division will cancel the dismissal order on request of the party on a showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control.

(11) The final order is effective immediately upon being signed or as otherwise provided in the order. A final order resulting from the claimant's withdrawal of the hearing request is effective the date the claimant withdraws. When claimant fails to appear for the hearing and the hearing request is dismissed by final order, the effective date of the order is the date of the scheduled hearing.

(12) All contested case hearing decisions are subject to judicial review under ORS 183.482 in the Court of Appeals.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183.341 & 413.042

Stats. Implemented: ORS 183.411 - 183.470, 414.025, 414.055 & 414.065

Hist.: AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0053; HR 19-1990, f. & cert. ef. 7-9-90; HR 35-1990(Temp), f. & cert. ef. 10-15-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 41-1990, f. & cert. ef. 11-26-90; HR 11-1991(Temp), f. & cert. ef. 3-1-91; HR 34-1991, f. & cert. ef. 8-26-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0760; HR 7-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 6-2012(Temp), f. & cert. ef. 2-1-12 thru 7-4-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12

Rule Caption: Amending Preferred Drug List and Prior Authorization Guide – March 29, 2012 DUR/P&T Action.

Adm. Order No.: DMAP 29-2012

Filed with Sec. of State: 6-21-2012

Certified to be Effective: 6-21-12

Notice Publication Date: 4-1-2012

Rules Amended: 410-121-0030, 410-121-0040

Rules Repealed: 410-121-0040(T)

Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030: Updates to the Preferred Drug List (PDL): Remove carisoprodol, carisoprodol/aspirin (Carisoprodol Compound®), methocarbamol, orphenadrine citrate, and orphenadrine/aspirin/

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caffeine (Orphenadrine Compound Forte®) from the Analgesics Skeletal Muscle Relaxants drug class.

410-121-0040: Permanently amend temporary changes filed on May 14, 2012. Also update the prior authorization guide as follows:

Short-Acting Opioids: criteria combined with Long-Acting Opioids and Long-Acting Opioids High-Dose Limits to create one single criterion titled "Opioids."

Long-Acting Opioids: criteria combined with Short-Acting Opioids and Long-Acting Opioids High-Dose Limits to create one single criterion titled "Opioids."

Long-Acting Opioids High-Dose Limits: criteria combined with Short-Acting Opioids and Long-Acting Opioids to create one single criterion titled "Opioids."

Opioids: new criteria created to combine above mentioned criteria into one document.

Dalframpridine: new criteria.

Fingolimod: new criteria.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-121-0030

Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool that the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000 (cc)) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drug(s) available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T, that result from an evidence-based evaluation process, as the basis for selecting the most effective drug(s);

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drug(s) for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information which makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL, using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form, unless:

(a) The practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner, in their professional judgment, wishes to prescribe a physical health drug not on the PDL, they may request an exception, subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 & 414.325

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Oregon Health Services Commission's Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Oregon Health Authority (Authority) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the OHP Fee-For-Service Pharmacy PA Criteria Guide (PA Criteria Guide) dated June 21, 2011, incorporated in rule by reference and found on our Web page at: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html>

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First DataBank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

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(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug

Stat. Auth.: ORS 409.110, 413.042, 414.065 & 414.334

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12

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Rule Caption: Amendments to Definitions and General Administration in Health Insurers' Tax Rules.

Adm. Order No.: DMAP 30-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 12-27-12

Notice Publication Date:

Rules Amended: 410-050-0100, 410-050-0110

Subject: The "definitions" and "general administration" rules for the Health Insurers' tax rules are being amended to make housekeeping changes, update references to standard naming conventions, and include Coordinated Care Organizations (CCO), because they are subject to the health insurers' tax.

Temporary rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>. For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

410-050-0100

Definitions

In addition to the definitions in OAR 410-141-0000 and 410-120-0000, the following definitions apply to OAR 410-050-0100 to 410-050-0250:

(1) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported by the prepaid health plans (PHPs). If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(2) "Delinquency" means the PHP failed to file a report when due as required under these rules or to pay the tax as correctly computed when the tax was due.

(3) "Premium payments" means all capitation payments received by the PHPs on a per enrollee per month basis for the provision of health services specified by contract. "Premium" does not include any form of payment by Oregon Health Plan (OHP) enrollees.

(4) "Managed care premiums" means all premium payments paid to a PHP including the capitation payments as defined in OAR 410-141-0000. Managed care premiums do not include Medicare premiums.

(5) "Coordinated Care Organization (CCO) premium payments" means the gross amount of payments from the Authority to the CCO for providing health services as defined in OAR 410-141-0000.

Stat. Auth.: ORS 409.050, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 37, 2009 HB 2116

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09; DMAP 30-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12

410-050-0110

General Administration

(1) The purpose of these rules is to implement the health insurers' tax on PHPs and CCOs.

(2) The Authority shall administer, enforce, and collect the health insurers' tax. The Authority may assign employees, auditors, and other agents as the Oregon Health Authority Director may designate to assist in the administration, enforcement, and collection of the taxes.

(3) The Authority may make rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce, and collect the taxes.

(4) The Authority may adopt forms and reporting requirements and change the forms and reporting requirements, as necessary to administer, enforce, and collect the taxes.

Stat. Auth.: ORS 409.050, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 38

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 30-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12

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Rule Caption: Amendment of DMEPOS rules due to legislative buyback and additional budget reductions.

Adm. Order No.: DMAP 31-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12 thru 12-27-12

Notice Publication Date:

Rules Amended: 410-122-0186, 410-122-0325

Subject: The Division needs to temporarily amend OAR 410-122-0186 to implement new payment methodology that reflects additional reimbursement provided by the legislative buyback to the DMEPOS program and factoring in additional budget reductions for the remainder of the biennium. The Division needs to temporarily amend OAR 410-122-0325 to implement new payment methodology as a cost saving to meet budget mandates.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-122-0186

Payment Methodology

(1) The Division of Medical Assistance Programs (Division) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on the 2010 Medicare fee schedule.

(a) The Division fee schedule amount is 84.5.0% of 2010 Medicare Fee Schedule for items covered by Medicare and the Division, except for:

(A) Ostomy supplies fee schedule amounts are 95.4% of 2010 Medicare Fee Schedule (See Table 122-0186-1 for list of codes subject to this pricing); and

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(B) Prosthetic and Orthotic fee schedule amounts (L-codes) are 84.5% of 2010 Medicare Fee Schedule; and

(C) Complex Rehabilitation/Wheelchair fee schedule amounts are 90% of 2010 Medicare Fee Schedule (See Table 122-0186-2 for list of codes subject to this pricing);

(b) For items that are not covered by Medicare, but covered by the Division, the fee schedule amount shall be 99% DMAP's published rate on 7/31/11.

(c) For new codes added by CMS, payment will be based on the most current Medicare fee schedule and will follow the same payment methodology as stated in (1)(a) and (b).

(2) Payment is calculated using the lesser of the following:

(a) The Division fee schedule amount, using the above methodology in (1) (a) & (b); or

(b) The manufacturer's suggested retail price (MSRP); or

(c) The actual charge submitted.

(3) The Division reimburses for the lowest level of service that meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) The Division shall reimburse miscellaneous codes E1399 and K0108, and any code that requires manual pricing, using the following:

(a) 75% of Manufacturer's Suggested Retail Price (MSRP) verifiable with quote, invoice or bill from the manufacturer; or

(b) Actual charge submitted by the provider.

(c) If MSRP is not available then reimbursement shall be acquisition cost plus 20% verifiable with quote, invoice, or bill from the manufacturer.

(5) Reimbursement on miscellaneous codes E1399 and K0108 shall be capped at \$3,200.00.

(6) When requesting prior authorization (PA) for items billed at or above \$150, the DMEPOS provider must submit:

(a) A copy of the items from (4)(a) or (b) that will be used to bill; and,

(b) Name of the manufacturer, description of the item, including product name/model name and number, serial number when applicable, and technical specifications;

(c) A picture of the item upon request by DMAP.

(7) The DMEPOS provider must submit verification for items billed with codes A4649 (surgical supply; miscellaneous), E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified) when no specific Healthcare Common Procedure Coding System (HCPCS) code is available and an item category is not specified in Chapter 410, division 122 rules. Providers are allowed to submit verification from an organization such as the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(8) The Division may review items that exceed the maximum allowable or cap on a case-by-case basis and may request the provider submit the following documentation for reimbursement:

(a) Documentation that supports the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) that clearly explains why the less costly alternative is not sufficient to meet the client's medical needs, and;

(c) The expected hours of usage per day, and;

(d) The expected outcome or change in the client's condition.

(9) For codes A4649, E1399 and K0108 when the cost is \$150.00 or less per each unit:

(a) Only items that have received an official product review coding decision from an organization such as PDAC with codes A4649, E1399 or K0108 may be billed to the Division. These products may be listed in the PDAC Durable Medical Equipment Coding System Guide (DMECS) DMEPOS Product Classification Lists;

(b) Subject to service limitations of the Division's rules;

(c) PA is not required.

(d) The amount billed to the Division must not exceed 75% of Manufacturer's Suggested Retail Price (MSRP). The provider is required to retain documentation of the quote, invoice or bill to allow the Division to verify through audit procedures.

(10) For rented equipment, the equipment is considered paid for and owned by the client when the Division fee schedule allowable is met or the actual charge from the provider is met, whichever is lowest. The provider must transfer title of the equipment to the client.

(11) Table 122-1086-1: Ostomy Codes, Table 122-0186-2: Complex Rehabilitation/Wheelchair Codes

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 31-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (Division) may cover a power wheelchair (PWC) (K0813-K0816, K0820-K0829, K0835-K0843, K0848-K0864, K0898) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day;

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the PWC that is being requested;

(E) Use of a PWC will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(F) The client is willing to use the requested PWC in the home, and the client will use it on a regular basis in the home;

(G) The client has either:

(i) Strength, postural stability, or other physical or mental capabilities insufficient to safely operate a power-operated vehicle (POV) in the home; or

(ii) Living quarters that do not provide adequate access between rooms, maneuvering space, and surfaces for the operation of a POV with a small turning radius;

(H) The client has either:

(i) Sufficient mental and physical capabilities to safely operate the PWC that is being requested; or

(ii) A caregiver who is unable to adequately propel an optimally configured manual wheelchair, but is available, willing, and able to safely operate the PWC that is being requested;

(I) The client's weight is less than or equal to the weight capacity of the PWC that is being requested;

(b) Only when conditions of coverage as specified in (1) (a) of this rule are met, may the Division authorize a PWC for any of the following situations:

(A) When the PWC can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits, and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a PWC will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a PWC may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-compliance, whether willing or involuntary, can be grounds for denial of PWC coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a PWC;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement costs;

(C) When a covered client-owned wheelchair is in need of repair, the Division may pay for one month's rental of a wheelchair (see OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

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(c) For a PWC to be covered, the treating physician or nurse practitioner must conduct a face-to-face examination of the client before writing the order and the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device:

(A) When this examination is performed during a hospital or nursing facility stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(B) The physician or nurse practitioner may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination;

(i) If the client was referred to the PT/OT before being seen by the physician or nurse practitioner, then once the physician or nurse practitioner has received and reviewed the written report of this examination, the physician or nurse practitioner must see the client and perform any additional examination that is needed. The physician's or nurse practitioner's report of the visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician or nurse practitioner must provide the DMEPOS provider with a copy of both examinations within 45 days of the face-to-face examination with the physician or nurse practitioner;

(ii) If the physician or nurse practitioner examined the client before referring the client to a PT/OT, then again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician or nurse practitioner visit. However, it is also acceptable for the physician or nurse practitioner to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician or nurse practitioner must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician or nurse practitioner signs and dates the PT/OT examination;

(iii) If the PWC is a replacement of a similar item that was previously covered by the Division or when only PWC accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(d) The Division does not reimburse for another chair if a client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. The Division does not reimburse for adapting the living quarters;

(f) The equipment must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Professional (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client;

(g) The provider's ATP must be employed by a provider in a full-time, part-time or contracted capacity as is acceptable by state law. The provider's ATP, if part-time or contracted, must be under the direct control of the provider;

(h) Documentation must be complete and detailed enough so a third party would be able to understand the nature of the provider's ATP involvement, if any, in the licensed/certified medical professional (LCMP) specialty evaluation;

(i) The provider's ATP may not conduct the provider evaluation at the time of delivery of the power mobility device to the client's residence;

(j) Reimbursement for wheelchair codes include all labor charges involved in the assembly of the wheelchair and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the wheelchair;

(k) The delivery of the PWC must be within 120 days following completion of the face-to-face examination;

(l) A PWC may not be ordered by a podiatrist;

(m) The following services are not covered:

(i) A PWC for use only outside the home;

(ii) A PWC with a captain's chair for a client who needs a separate wheelchair seat and/or back cushion;

(iii) Items or upgrades that primarily allow performance of leisure or recreational activities including but not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, and tail lights;

(iv) Power mobility devices, not coded by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) or does not meet criteria (K0899);

(v) Power wheelchairs, group 4 (K0868-K0871, K0877-K0880, K0884-K0886);

(vi) Power wheelchairs, not otherwise classified (K0898);

(vii) Seat elevator PWCs (E2300, K0830, K0831).

(2) Coding Guidelines:

(a) Specific types of PWCs:

(A) A Group 1 PWC (K0813-K0816) or a Group 2 Heavy Duty (HD), Very Heavy Duty (VHD), or Extra Heavy Duty (EHD) wheelchair (K0824-K0829) may be covered when the coverage criteria for a PWC are met;

(B) A Group 2 Standard PWC with a sling/solid seat (K0820, K0822) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client is using a skin protection and/or positioning seat and/or back cushion that meets the coverage criteria defined in Wheelchair Options/Accessories, 410-122-0340;

(C) A Group 2 Single Power Option PWC (K0835 – K0840) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Requires a drive control interface other than a hand or chin-operated standard proportional joystick (examples include but are not limited to head control, sip and puff, switch control); or

(II) Meets the coverage criteria for a power tilt or recline seating system (see Wheelchair Options/Accessories, 410-122-0340) and the system is being used on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(D) A Group 2 Multiple Power Option PWC (K0841-K0843) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Meets the coverage criteria for a power tilt or recline seating system with three or more actuators (see Wheelchair Options/Accessories, 410-122-0340); or

(II) Uses a ventilator which is mounted on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT, OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(E) A Group 3 PWC with no power options (K0848-K0855) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client's mobility limitation is due to a neurological condition, myopathy or congenital skeletal deformity; and

(iii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical necessity for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, physician or nurse practitioner may have no financial relationship with the DMEPOS provider;

(F) A Group 3 PWC with Single Power Option (K0856-K0860) or with Multiple Power Options (K0861-K0864) may be covered when:

(i) The Group 3 criteria (2)(a)(E) (i-ii) are met; and

(ii) The Group 2 Single Power Option (2)(a)(C)(i)(I) or (II) and (2)(a)(C)(ii) or Multiple Power Options (2)(a)(D)(i)(I) or (II) and (2)(a)(D)(ii) (respectively) are met;

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(b) PWC Basic Equipment Package: Each PWC code is required to include the following items on initial issue (i.e., no separate billing/payment at the time of initial issue, unless otherwise noted):

(A) Lap belt or safety belt (E0978);

(B) Battery charger single mode (E2366);

(C) Complete set of tires and casters any type (K0090, K0091, K0092, K0093, K0094, K0095, K0096, K0097, K0099);

(D) Legrests. There is no separate billing/payment if fixed or swing-away detachable non-elevating legrests with/without calf pad (K0051, K0052, E0995) are provided. Elevating legrests may be billed separately;

(E) Fixed/swingaway detachable footrests with/without angle adjustable footplate/platform (K0037, K0040, K0041, K0042, K0043, K0044, K0045, K0052);

(F) K0040 may be billed separately with K0848 through K0864;(G) Armrests. There is no separate billing/ payment if fixed/swingaway detachable non-adjustable armrests with arm pad (K0015, K0019, K0020) are provided. Adjustable height armrests may be billed separately;

(H) Upholstery for seat and back of proper strength and type for patient weight capacity of the power wheelchair (E0981, E0982);

(I) Weight specific components per patient weight capacity;

(J) Controller and Input Device: There is no separate billing/payment if a non-expandable controller and proportional input device (integrated or remote) is provided. If a code specifies an expandable controller as an option (but not a requirement) at the time of initial issue, it may be separately billed;

(c) If a client needs a seat and/or back cushion but does not meet coverage criteria for a skin protection and/or positioning cushion, it may be appropriate to request a captain's chair seat rather than a sling/solid seat/back and a separate general use seat and/or back cushion;

(d) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified (see OAR 410-122-0720 Pediatric Wheelchairs);

(e) Contact the Medicare Pricing, Data Analysis and Coding (PDAC) contractor regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician or nurse practitioner:

(A) This report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

(iv) Why a POV/scooter can't meet this client's mobility needs in the home;

(v) This client's physical and mental abilities to operate a PWC safely in the home:

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in activities of daily living (ADLs), how these conditions will be ameliorated or compensated by use of the wheelchair;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home;

(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a PWC may use that device outside the home, because the Division coverage of a wheelchair is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's or nurse practitioner's written order, received by the DMEPOS provider within 45 days (date stamp or equivalent must be used to document receipt date) after the physician's or nurse practitioner's face-to-face examination. The order must include all of the following elements:

(A) Client's name;

(B) Description of the item that is ordered. This may be general — e.g., "power wheelchair" or "power mobility device"— or may be more specific:

(i) If this order does not identify the specific type of PWC that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific PWC that is being ordered and any options and accessories requested;

(ii) The items on this clarifying order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination;

(C) Date of the face-to-face examination;

(D) Pertinent diagnoses/conditions and diagnosis codes that relate specifically to the need for the PWC;

(E) Length of need;

(F) Physician's or nurse practitioner's signature;

(G) Date of physician's or nurse practitioner's signature;

(c) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable;

(e) For the home assessment, prior to or at the time of delivery of a PWC, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a PWC. Assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) A written document (termed a detailed product description) prepared by the DMEPOS provider and signed and dated by the physician or nurse practitioner that includes:

(i) The specific base (HCPCS code and manufacturer name/model) and all options and accessories (including HCPCS codes), whether PA is required or not, that will be separately billed;

(ii) The DMEPOS provider's charge and the Division fee schedule allowance for each separately billed item;

(iii) If there is no Division fee schedule allowance, the DMEPOS provider must enter "not applicable";

(iv) The DMEPOS provider must receive the signed and dated detailed product description from the physician or nurse practitioner prior to delivery of the PWC;

(v) A date stamp or equivalent must be used to document receipt date of the detailed product description; and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The DMEPOS provider must keep the above documentation on file;

(i) Documentation that the coverage criteria have been met must be present in the client's medical records and made available to the Division on request.

(4) Prior Authorization:

(a) All codes in this rule required PA and may be purchased, rented and repaired;

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(b) Codes specified in this rule are not covered for clients residing in nursing facilities;

(c) Reimbursement on standard Group 1 and 2 wheelchairs without power option (K0813-K0816, K0820-K0829) will only be made on a monthly rental basis.

(d) Rented equipment is considered purchased when the Division fee schedule allowable for purchase is met, or the actual charge from the provider is met, whichever is the lowest;

(5) Table 122-0325

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042 & 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 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12

Rule Caption: Revisions to methodology, perm temporary rules, add clarifying language and repeal a rule.

Adm. Order No.: DMAP 32-2012

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 7-1-12

Notice Publication Date: 6-1-2012

Rules Amended: 410-125-0120, 410-125-0150, 410-125-0155, 410-125-0195, 410-125-0410, 410-125-0450

Rules Repealed: 410-125-0145

Subject: The Hospital Program administrative rules govern the Division of Medical Assistance Programs' (Division) payment for services to certain clients. The Division will permanently amend OAR 410-125-0120 to clarify language for medical transportation; OAR 410-125-0150 and 410-125-0155 to reflect changes in payment methodology for Disproportionate Share Hospitals and Hospital Upper Payment Limits; OAR 410-125-0410 changes hospital readmission policy to 30 days; OAR 410-125-0195 and 410-125-0450 will perm temporary rules. Repeal OAR 410-125-0145 for Proportionate Share Payments for Public Academic Teaching Hospitals.

Rules Coordinator: Cheryl Peters—(503) 945-6527

410-125-0120

Transportation To and From Medical Services

(1) Transportation to and from medical services, including hospital services, is a covered service. However, all non-emergency transports require prior authorization in order for the transportation provider to be paid.

(2) The transportation must be the least expensive obtainable under existing conditions and appropriate to the client's needs.

(3) Contact the Division of Medical Assistance Program (Division) - contracted regional Transportation Brokerage (Brokerage) for prior authorization for the transport or instruct the transportation provider to contact the Brokerage. Brokerage map and contact information is available at <http://www.dhs.state.or.us/policy/healthplan/guides/medtrans/main.html>.

(4) Hospitals must follow the after hours procedures for the Brokerages and contact the appropriate after hours providers for non-emergent transportation for hospital discharges.

(5) No prior authorization is required when the client's condition requires emergency transport.

(6) When a hospital sends a patient to another facility or provider during the course of an inpatient stay and the client is returned to the admitting hospital within 24 hours, the hospital must arrange for and pay for the transportation. See billing instructions contained in the Hospital Supplemental Information on the Division website for additional information.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0210; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2012, f. 6-29-12, cert. ef. 7-1-12

410-125-0150

Disproportionate Share

(1) The Disproportionate-share hospital (DSH) payment is an additional reimbursement made to hospitals that serve a disproportionate share of low-income patients with special needs.

(a) To receive DSH payments, a hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide non-emergency obstetrical services to Medicaid patients. For hospitals in a rural area (outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital that performs non-emergency obstetric procedures. This requirement does not apply to a hospital in which a majority of inpatients are under 18 years of age, or a hospital that had discontinued or did not offer non-emergency obstetric services as of December 21, 1987. No hospital may qualify for disproportionate share payments unless the hospital has, at a minimum, a Medicaid utilization rate of 1 percent. The Medicaid utilization rate is the ratio of total paid Medicaid (Title XIX, non-Medicare) days to total inpatient days. Newborn days, days in specialized wards, and administratively necessary days are included. Days attributable to individuals eligible for Medicaid in another State are also accounted for;

(b) Information on total inpatient days is taken from the most recent Medicare Cost Report.

(2) A hospital's eligibility for DSH payments is determined at the beginning of each fiscal year. Hospitals that are not eligible under Criteria 1 may apply for eligibility at any time during the year under Criteria 2. A hospital may be determined eligible under Criteria 2 only after being determined ineligible under Criteria 1.

(3) Eligibility under Criteria 2 is effective from the beginning of the quarter in which eligibility is approved. Out-of-state hospitals are eligible for DSH payments if they have been designated by their state Title XIX Medicaid program as eligible for DSH payments within that state:

(a) Criteria 1: One or more standard deviation above the mean

(A) The ratio of total paid Medicaid inpatient (Title XIX, non-Medicare) days for hospital services (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) to total inpatient days is one or more standard deviations above the mean for all Oregon hospital;

(B) Information on total inpatient days is taken from the most recent audited Medicare Cost Report. The total paid Medicaid inpatient days is based on Division of Medical Assistance Programs' (Division) records for the same cost reporting period;

(C) Information on total paid Medicaid days is taken from Division reports of paid claims for the same fiscal period as the Medicare Cost Report.

(b) Criteria 2: A low-income utilization rate exceeding 25 percent

(A) The Low income utilization rate is the sum of percentages (3)(b)(A)(i) and (3)(b)(A)(ii) below:

(i) The Medicaid percentage: The total of Medicaid inpatient and outpatient revenues paid to the hospital for hospital services (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) plus any cash subsidies received directly from State and local governments in the most recent Medicare cost reporting period. This amount is divided by the total amount of inpatient and outpatient revenues and cash subsidies of the hospital for patient services in the most recent Medicare cost reporting period. The result is expressed as a percentage;

(ii) The charity care percentage: The total hospital charges for inpatient hospital services for charity care in the most recent Medicare cost reporting period, minus any cash subsidies received directly from State and local government in the same period is divided by the total amount of the hospital's charges for inpatient services in the same period. The result is expressed as a percentage;

(iii) Charity care is provided to individuals who have no source of payment, including third party and personal resources.

(B) Charity care shall not include deductions from revenues or the amount by which inpatient charges are reduced due to contractual allowances and discounts to other third party payers, such as Fully-Capitated Health Plans (FCHPs), Medicare, Medicaid, etc;

(C) The information used to calculate the low income utilization rate is taken from the following sources:

(i) The most recent Medicare Cost Reports;

(ii) The Division's records of payments made during the same reporting period;

(iii) Hospital-provided financial statements, prepared and certified for accuracy by a licensed public accounting firm for the same reporting period;

(iv) Hospital-provided official records from state and county agencies of any cash subsidies paid to the hospital during the same reporting period;

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(v) Any other information that the Division, working in conjunction with representatives of Oregon hospitals, determines is necessary to establish eligibility.

(D) The Division determines within 30 days of receipt of all required information if a hospital is eligible under the low income utilization rate criteria.

(d) Disproportionate-share payment calculations:

(A) All hospitals that have been deemed DSH hospitals will always qualify for DSH payments under criteria 1 or criteria 2. Hospital ranking is done on an annual basis for all hospitals. Once eligible hospitals are determined Division calculates the standard deviations for the hospitals to determine if they will be eligible under criteria 1 or criteria 2.

(B) Criteria 1: one or more deviations above the mean. The quarterly DSH payment to hospitals eligible under criteria 1 is the sum of Diagnosis Related Groups (DRG) weights for paid Title XIX non-Medicare claims for the quarter multiplied by a percentage of the hospital-specific Unit Value; this determines the hospital's DSH payment for the current quarter. The Unit Value used for eligible Type A, Type B, and Critical Access Hospitals is set at the same rate as for out-of-state hospitals. The calculation is as follows:

(i) For eligible hospitals more than one standard deviation and less than two standard deviations above the mean, the disproportionate share percentage is 5%. The total of all relative weights is multiplied by the hospital's unit value. This amount is multiplied by 5% to determine the DSH payment;

(ii) For eligible hospitals more than two and less than three standard deviations above the mean, the percentage is 10%. The total of all relative weights is multiplied by the hospital's unit value. The amount is multiplied by 0.10 to determine the DSH payment.

(iii) For eligible hospitals more than three standard deviations above the mean, the percentage is 25%. The total of all relative weights is multiplied by the hospital's unit value. This amount is multiplied by 0.25 to determine the DSH payment.

(C) Eligibility under Criteria 2 — For hospitals eligible under Criteria 2 (low income utilization rate), the payment is the sum of DRG weights for claims paid by the Division in the quarter, multiplied by the hospital's disproportionate share adjustment percentage established under Section 1886(d)(5)(F)(iv) of the Social Security Act multiplied by the hospital's unit value;

(D) For out-of-state hospitals, the quarterly DSH payment is 5% of the out-of-state unit value multiplied by the sum of the Oregon Medicaid DRG weights for the quarter. Out-of-state hospitals that have entered into agreements with the Division for payment are reimbursed according to the terms of the agreement or contract.

(d) Public Academic Medical Center Disproportionate Share adjustments:

(A) Public academic medical centers that meet the following eligibility standards shall be deemed eligible for additional DSH payments up to 100% of their cost for serving Medicaid fee for service clients and indigent and uninsured patients:

(i) The hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services; and

(ii) The hospital must be located within the State of Oregon (border hospitals are excluded); and

(iii) The hospital provides a major medical teaching program, defined as a hospital with more than 200 residents or interns.

(B) 100% of the costs for hospitals qualifying for this DSH payment will be determined from the following sources:

(i) The most recent Medicare Cost Reports; or

(ii) The Division's record of payments made during the same reporting period; or

(iii) Hospital provided official records from state and county agencies of any cash subsidies paid to the hospital during the same reporting period; or

(iv) Any information which the Division, working in conjunction with representatives of Oregon hospitals, determines necessary to establish cost.

(e) Additional Disproportionate Adjustments:

(A) For all hospitals with a Medicaid utilization rate above one percent of all payer utilization, the DSH payment is the ratio of the hospital's low income shortfall to the low income shortfall for all eligible hospitals multiplied by the total Federal disproportionate share allotment remaining after disproportionate payments have been made. (B) The low income shortfall is the Medicaid costs for inpatient and outpatient hospital services plus uncompensated care for the uninsured cost for inpatient and outpatient hos-

pital services less total Medicaid and self-pay payments for inpatient and outpatient hospital services.

(f) Disproportionate-share payment schedule:

(A) Hospitals qualifying for DSH payments under section (3) (c) above will receive quarterly payments based on claims paid during the preceding quarter. Hospitals that were eligible during one fiscal year but are not eligible for disproportionate share status during the next fiscal year will receive DSH payments based on claims paid in the quarter in which they were eligible. Hospitals qualifying for DSH payments under section (3) (e) above will receive quarterly payments of 25 percent of the amount determined under this section;

(B) Effective October 1, 1994, and in accordance with the Omnibus Budget Reconciliation Act of 1993, DSH payments to hospitals will not exceed 100 percent of the "basic limit" which is:

(i) The inpatient and outpatient costs for services to Medicaid patients, less the amounts paid by the State under the non-DSH payment provisions of the State plan, plus;

(ii) The inpatient and outpatient costs for services to uninsured indigent patients, less any payments for such services. An uninsured indigent patient is defined as an individual who has no other resources to cover the costs of services delivered. The costs attributable to uninsured patients are determined through disclosures in the Medicare (HCFA-2552) cost report and state records on indigent care.

(C) The State has a contingency plan to assure that disproportionate share hospital payments will not exceed the State disproportionate share hospital allotment (allotment). A reduction in payments in proportion to payments received will be effected to meet the requirements of section 1923(f) of the Social Security Act. DSH payments are made quarterly. Before payments are made for the last quarter of the Federal fiscal year, payments for the first three quarters and the anticipated payment for the last quarter are cumulatively compared to the allotment.

(i) If the allotment will be exceeded, the DSH payments for the last quarter will be adjusted proportionately for each hospital qualifying for payments under section (3)(d).

(ii) If the allotment will still be exceeded after this adjustment, DSH payments to out-of-state hospitals will be adjusted in proportion to DSH payments received during the previous three quarters.

(iii) If this second adjustment still results in the allotment being exceeded, hospitals qualifying for payments under section (3)(c) (Criteria 1 and 2) will be adjusted by applying each hospital's proportional share of payments during the previous three quarters to total DSH payments to all hospitals for that period.

(D) Similar monitoring, using a predetermined limit based on the most recent audited costs, and including the execution of appropriate adjustments to DSH payments are in effect to meet the hospital specific limit provisions detailed in section 1923(g) of the Social Security Act.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0006 & 461-015-0124; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0620; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0940; HR 36-1993, f. & cert. ef. 12-1-93; HR 24-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 6-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 23-1998, f. & cert. ef. 7-15-98; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 32-2012, f. 6-29-12, cert. ef. 7-1-12

410-125-0155

Upper Limits on Payment of Hospital Claims

(1) Supplemental payments:

(a) Private Hospital Supplemental Payments:

(A) From the private Upper Payment Limit (UPL) gap, payments shall be made to all private Diagnosis Related Groups (DRG) hospitals in the form of a per discharge payment applied to hospital specific Medicaid fee-for-service discharges from the quarter preceding the month of the payment;

(B) This payment will be equal to one quarter of the gap amount divided by the total private DRG hospital Medicaid fee-for-service discharges from the quarter preceding the month of payment;

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(C) The supplemental payments for Private Hospitals will not exceed the UPL for inpatient hospital services.

(b) Non-State Government Owned Hospital Supplemental Payments:

(A) From the non-state government owned hospital upper payment limit gap, payments shall be made to all non-state government owned DRG hospitals in the form of a per discharge payment applied to hospital specific Medicaid fee-for-service discharges from the quarter preceding the month of the payment;

(B) This payment will be equal to one quarter of the gap amount divided by the total non-state government owned DRG hospital Medicaid fee-for-service discharges from the quarter preceding the month of payment;

(C) The supplemental payments for non-state government owned Hospitals will not exceed the UPL for inpatient hospital services.

(2) For Type A, Type B and Critical Access Hospitals, reimbursement shall be limited to the lesser of allowable costs or billed charges. This limitation shall be applied separately to inpatient and outpatient services.

(3) Payments will not exceed final approved plan:

(a) Total reimbursements to a state-operated facility made during the Division of Medical Assistance Program (Division) fiscal year (July 1 through June 30) may not exceed any limit imposed under federal law in the final approved plan;

(b) Total aggregate inpatient and outpatient reimbursements to all hospitals made during the Division's fiscal year (July 1 through June 30) may not exceed any limit imposed under federal law in the final approved plan.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 53-1991, f. & cert. ef. 11-18-91; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 32-2012, f. 6-29-12, cert. ef. 7-1-12

410-125-0195

Outpatient Services In-State DRG Hospitals

(1) The National Drug Code (NDC) must be included on all claim formats for physician administered drug codes required by the Deficit Reduction Act of 2005.

(2) For discharges prior to January 1, 2012, In-State Diagnostic Related Grouper (DRG) hospital outpatient and emergency services are reimbursed under a cost-based methodology.

(a) Interim reimbursement:

(A) The interim reimbursement percentage is developed using the cost-to-charge ratio methodology, derived from the Medicare cost report, and applied to billed charges;

(B) The interim payment is the estimated percentage needed to achieve 100 percent of hospital cost in aggregate; and

(C) This interim percentage is applied to all outpatient charges except for clinical laboratory services. Interim reimbursement for clinical laboratory services is calculated according to rates published in the Division of Medical Assistance Programs' (Division) fee schedule.

(b) Settlement reimbursement:

(A) For Medicaid- and Children's Health Insurance Program-eligible (Titles XIX and XXI of the Social Security Act) clients, an adjustment to 100 percent of outpatient costs is made during the cost settlement process;

(B) For General Assistance (GA) clients, outpatient hospital services are reimbursed at 50 percent of billed charges or 59 percent of costs, whichever is less.

(3) Effective for discharges on or after January 1, 2012:

(a) In-State DRG hospital outpatient and emergency services will be reimbursed in accordance with Code of Federal Regulations 42 Part 419 Prospective Payment System for Hospital Outpatient Department Services, using the Ambulatory Payment Classification (APC) Group methodology, and

(b) Payments will be based on rates determined by State Actuarial Services to be equivalent to 100 percent of Medicare outpatient payments for each DRG hospital.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 18-

1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 43-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 10-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-28-09; DMAP 31-2009, f. 9-22-09, cert. ef. 10-1-09; DMAP 48-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12; DMAP 32-2012, f. 6-29-12, cert. ef. 7-1-12

410-125-0410

Readmission

(1) A patient whose readmission for surgery or follow-up care is planned at the time of discharge must be placed on leave of absence status, and both admissions must be combined into a single billing. The Division of Medical Assistance Programs (Division) will make one payment for the combined service. Examples of planned readmissions include, but are not limited to, situations where surgery could not be scheduled immediately, a specific surgical team was not available, bilateral surgery was planned, or when further treatment is indicated following diagnostic tests but cannot begin immediately.

(2) A patient whose discharge and readmission to the hospital is within thirty (30) days for the same or related diagnosis must be combined into a single billing. Division shall make one payment for the amount appropriate for the combined service.

(3) This rule does not apply to:

(a) Readmissions for an unrelated diagnosis;

(b) Readmissions occurring more than 30 days after the date of discharge;

(c) Readmissions for a diagnosis that may require episodic (a series) acute care hospitalizations to stabilize the medical condition such as, but not limited to: diabetes, asthma, or chronic obstructive pulmonary disease. See billing instructions in the Hospital Supplemental guide on the Division's website for additional information.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 36-1993, f. & cert. ef. 12-1-93; ; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 13-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 32-2012, f. 6-29-12, cert. ef. 7-1-12

410-125-0450

Provider Preventable Conditions

(1) Health Care-Acquired Conditions (HCAC):

(a) Formally known as Medicare's list of "hospital acquired conditions" (HAC) that apply to inpatient hospital settings with dates of admission on or after January 1, 2011 except those hospitals exempt from the reporting requirements.

(b) For inpatient hospital admissions on or after July 1, 2012, all in-state, contiguous and non-contiguous hospitals will be required to report health care-acquired conditions.

(A) A HCAC is a condition that is reasonably preventable and was not present or identified at the hospital admission.

(B) A "present on admission" (POA) indicator is a status code the hospital uses on an inpatient claim that indicates if a condition was present at the time the order for inpatient admission occurs. A POA indicator can also identify a condition that developed during an outpatient encounter. This includes, but not limited to the emergency department, observation and outpatient surgery.

(C) The Division of Medical Assistance Program (Division) shall use the most recent list of conditions identified as non-payable by Medicare. The Division may revise through addition or deletion the selected conditions at any time during the fiscal year.

(D) Diagnosis-related groups (DRG) and percentage paid hospitals are required to submit a POA indicator for the principal diagnosis and every secondary diagnosis code. A valid POA indicator is required on all inpatient hospital claims. Claims without a valid POA indicator shall be denied.

(E) Critical Access Hospitals (CAH) are exempt from the POA reporting requirements.

(F) For a complete list of HCACs and billing instructions please see the hospital supplemental guide.

(2) Other Provider-Preventable Conditions (OPPC):

(a) Applies to any health care setting, including but not limited to inpatient and outpatient hospital settings.

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(b) Effective July 1, 2012 the agency shall no longer cover the following conditions identified by the National Coverage Determinations (NCD):

(A) Wrong surgical or other invasive procedure performed on a patient;

(B) Surgical or other invasive procedure performed on the wrong body part;

(C) Surgical or other invasive procedure performed on the wrong patient.

(c) To protect the access to care the Division requires:

(A) No reduction in payment for a Provider Preventable Conditions (PPC) will be imposed on a provider when an identified PPC for a client existed prior to the initiation of treatment for that client by that provider.

(B) Reductions in provider payment may be limited to the extent that the identified PPC would otherwise result in an increase in payment; and the Division reasonably isolate for nonpayment the portion of the payment directly related to treatment for, and related to the PPC.

(3) For clients with both Medicare and Medicaid (duals) the agency shall not act as secondary payer for Medicare non-payment of HCAC.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 49-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12; DMAP 32-2012, f. 6-29-12, cert. ef. 7-1-12

Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Data collection rules for All-Payer Healthcare Claims Data Reporting Program.

Adm. Order No.: OHP 6-2012

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 7-9-12

Notice Publication Date: 6-1-2012

Rules Amended: 409-025-0100, 409-025-0110

Rules Repealed: 409-025-0100(T), 409-025-0110(T)

Subject: The Office for Oregon Health Policy and Research (OHPR) needs to amend these rules in order to correct a technical flaw in general reporting requirements to include entities with Dual Eligible Special Needs Plans in Oregon as mandatory reporters.

Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-025-0100

Definitions

The following definitions apply to OAR 409-025-0100 to 409-025-0170:

(1) "Accident policy" means an insurance policy that provides benefits only for a loss due to accidental bodily injury.

(2) "Administrator" means the administrator of the Office for Oregon Health Policy and Research.

(3) "Allowed amount" means the actual amount of charges for health-care services, equipment, or supplies that are covered expenses under the terms of an insurance policy or health benefits plan.

(4) "Association" means any organization, including a labor union, that has an active existence for at least one year, that has a constitution and bylaws and that has been organized and is maintained in good faith primarily for purposes other than that of obtaining insurance.

(5) "Attending provider" means the individual health care provider who delivered the health care services, equipment, or supplies specified on a health care claim.

(6) "Authority" means the Oregon Health Authority.

(7) "Billing provider" means the individual or entity that submits claims for health care services, equipment, or supplies delivered by an attending provider.

(8) "Capitated services" means services rendered by a provider through a contract in which payments are based upon a fixed dollar amount for each enrolled member on a monthly basis.

(9) "Carrier" shall have the meaning given that term in ORS 743.730(6).

(10) "Certificate of authority" shall have the meaning given that term in ORS 731.072.

(11) "Charges" means the actual dollar amount charged on the claim.

(12) "Claim" means an encounter or request for payment under the terms of an insurance policy, health benefits plan, Medicare, or Medicaid.

(13) "Co-insurance" means the percentage an enrolled member pays toward the cost of a covered service.

(14) "Coordinated Care Organization (CCO)" shall have the meaning given that term in ORS 414.025(5).

(15) "Co-payment" means the fixed dollar amount an enrolled member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

(16) "Current Procedural Terminology(CPT)" means a medical code set of physician and other services, maintained and copyrighted by the American Medical Association, and adopted by the U.S. Secretary of Health and Human Services as the standard for reporting physician and other services on standard transactions.

(17) "Data set" means a collection of individual data records, whether in electronic or manual files.

(18) "DCBS" means the Oregon Department of Consumer and Business Services.

(19) "Deductible" means the total dollar amount an enrolled member pays toward the cost of covered services over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

(20) "De-identified health information" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

(21) "Direct personal identifier" means information relating to an individual patient or enrolled member that contains primary or obvious identifiers, including:

(a) Names;

(b) Business names when that name would serve to identify a person;

(c) Postal address information other than town or city, state, and 5-digit zip code;

(d) Specific latitude and longitude or other geographic information that would be used to derive postal address;

(e) Telephone and fax numbers;

(f) Electronic mail addresses;

(g) Social security numbers;

(h) Vehicle identifiers and serial numbers, including license plate numbers;

(i) Medical record numbers;

(j) Health plan beneficiary numbers;

(k) Certificate and license numbers;

(l) Internet protocol (IP) addresses and uniform resource locators (URL) that identify a business that would serve to identify a person;

(m) Biometric identifiers, including finger and voice prints; and

(n) Personal photographic images.

(22) "Director's Office" means the Director's Office of the Oregon Health Authority.

(23) "Disability policy" means an insurance policy that provides benefits for losses due to a covered illness or disability.

(24) "Disclosure" means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

(25) "Dual Eligible Special Needs Plan" means a Special Needs Plan that enrolls beneficiaries entitled to both Medicare and Medicaid.

(26) "Eligibility file" means a data set containing demographic information for each individual enrolled member eligible for medical benefits for one or more days of coverage at any time during a calendar month for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEBB group health insurance plan, or services provided in Oregon.

(27) "Eligible employee" shall have the meaning given that term in ORS 743.730(12).

(28) "Employee" shall have the meaning given that term in ORS 654.005(4).

(29) "Employer" shall have the meaning given that term in ORS 654.005(5).

(30) "Encrypted identifier" means a code or other means of identification to allow individual patients or enrolled members to be tracked across data sets without revealing their identity.

(31) "Encryption" means a method by which the true value of data has been disguised in order to prevent the identification of individual patients or enrolled members and does not provide the means for recovering the true value of the data.

(32) "Enrolled member" means enrollee as defined in ORS 743.730(14).

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(33) "Facility" means a health care facility as defined in ORS 442.015(16).

(34) "Genetic tests" shall have the meaning given that term in ORS 192.531(14).

(35) "Group health insurance" shall have the meaning given that term in ORS 743.522.

(36) "Health benefit plan" shall have the meaning given that term in ORS 743.730(19).

(37) "Health care" shall have the meaning given that term in ORS 192.519(3).

(38) "Health care provider" shall have the meaning given that term in ORS 192.519(5).

(39) "Health information" shall have the meaning given that term in ORS 192.519(6).

(40) "Healthcare claims data file" means electronic health information including medical claims files, medical eligibility files, pharmacy claims files, pharmacy eligibility files, and any other related information specified in this rule.

(41) "Healthcare Common Procedure Coding System(HCPCS)" means a medical code set, maintained by the United States Department of Health and Human Services, that identifies health care procedures, equipment, and supplies for claim submission purposes.

(42) "HIPAA" means Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d, et seq. and the federal regulations adopted to implement the Act.

(43) "Hospital indemnity policy" means an insurance policy that provides benefits only for covered hospital stays.

(44) "Indirect personal identifier" means information relating to an individual patient or enrolled member that a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods could apply to render such information individually identifiable by using such information alone or in combination with other reasonably available information.

(45) "Individual", when used in a list of required lines of business, means individual health benefit plans.

(46) "Individually identifiable health information" shall have the meaning given that term in ORS 192.519(8).

(47) "Insurance" shall have the meaning given that term in ORS 731.102.

(48) "Labor union" means any organization which is constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(49) "Large group" means health benefit plans for employers with more than 50 employees.

(50) "Limited data set" means protected health information that excludes direct personal identifiers and is disclosed for research, program operations, or to a public health authority for public health purposes.

(51) "Long-term care insurance" shall have the meaning given that term in ORS 743.652(4).

(52) "Managed care organization"(MCO) means a prepaid managed care health services organization as defined in ORS 414.736.

(53) "Mandatory reporter" means any reporting entity defined as a mandatory reporter in OAR 409-025-0110.

(54) "Medicaid" means medical assistance provided under 42 U.S.C. section 1396a(section 1902 of the Social Security Act), as administered by the Division of Medical Assistance Programs.

(55) "Medicaid fee-for-service"(Medicaid FFS) means that portion of Medicaid where a health care provider is paid a fee for each covered health care service delivered to an eligible Medicaid patient.

(56) "Medical claims file" means a data set composed of health care service level remittance information for all adjudicated claims for each billed service including but not limited to member demographics, provider information, charge and payment information, and clinical diagnosis and procedure codes for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBS or OEBS group health insurance plan, or services provided in Oregon.

(57) "Medical provider file" means a data set containing information about health care providers providing health care services, equipment, or supplies to enrolled members during the reporting period.

(58) "Medicare" means coverage under Part A, Part B, Part C, or Part D of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(59) "Medicare Modernization Act" means the Medicare Prescription Drug, Improvement, and Modernization Act of 2003(Public Law 108-173) and the federal regulations adopted to implement the Act.

(60) "OEBS" means the Oregon Educators Benefit Board.

(61) "OHPR" means the Office for Oregon Health Policy and Research.

(62) "OMIP" means the Oregon Medical Insurance Pool.

(63) "Patient" means any person in the data set who is the subject of the activities of the claim performed by the health care provider.

(64) "Paid amount" means the actual dollar amount paid for claims.

(65) "PEBS" means the Oregon Public Employees' Benefit Board.

(66) "Person" shall have the meaning given that term in ORS 731.116.

(67) "Pharmacy benefit manager(PBM)" means a person or entity that performs pharmacy benefit management, including a person or entity in a contractual or employment relationship with a person or entity performing pharmacy benefit management for a health benefits plan.

(68) "Pharmacy claims file" means a data set containing service level remittance information from all adjudicated claims including, but not limited to, enrolled member demographics, provider information, charge and payment information, and national drug codes for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBS or OEBS group health insurance plan, or services provided in Oregon.

(69) "Pharmacy eligibility file" means a data set containing demographic information for each individual enrolled member eligible for pharmacy benefits for one or more days of coverage at any time during a calendar month for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBS or OEBS group health insurance plan, or services provided in Oregon.

(70) "Policy" shall have the meaning given that term in ORS 731.122.

(71) "Portability" means portability health benefit plans as defined in ORS 743.760.

(72) "Prepaid amount" means the fee for the service equivalent that would have been paid for a specific service if the service had not been capitated.

(73) "Premium" shall have the meaning given that term in ORS 743.730.

(74) "Principal investigator (PI)" means the person in charge of a research project that makes use of limited data sets. The PI is the custodian of the data and shall comply with all state and federal restrictions, limitations, and conditions of use associated with the data release.

(75) "Protected health information" shall have the meaning given that term in ORS 192.519(11).

(76) "Public health authority" means the Public Health Division of the Authority or local public health authority as defined in ORS 431.260(7).

(77) "Public health purposes" means the activities of a public health authority for the purpose of preventing or controlling disease, injury, or disability including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, investigations, and interventions.

(78) "Public use data set" means a publicly available data set of de-identified health information containing only the data elements specified by OHPR for inclusion.

(79) "Registered entity" means any person required to register with DCBS under ORS 744.714.

(80) "Reporting entity" means:

(a) An insurer as defined in ORS 731.106 or fraternal benefit society as defined in ORS 748.106 required to have a certificate of authority to transact health insurance business in Oregon.

(b) A health care service contractor as defined in ORS 750.005 that issues medical insurance in Oregon.

(c) A third-party administrator required to obtain a license under ORS 744.702.

(d) A pharmacy benefit manager or fiscal intermediary, or other person that is by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service.

(e) A prepaid managed care health services organization as defined in ORS 414.736.

(f) An insurer providing coverage funded under Part A, Part B, or Part D of Title XVIII of the Social Security Act, subject to approval by the United States Department of Health and Human Services.

(81) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

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(82) "Self-insured plan" means any plan, program, contract, or any other arrangement under which one or more employers, unions, or other organizations provide health care services or benefits to their employees or members in this state, either directly or indirectly through a trust or third-party administrator.

(83) "Small employer health insurance" means health benefit plans for employers whose workforce consists of at least two but not more than 50 eligible employees.

(84) "Special Needs Plan" means a Medicare health benefit plan created by the Medicare Modernization Act that is specifically designed to provide targeted care to individuals with special needs.

(85) "Specific disease policy" means an insurance policy that provides benefits only for a loss due to a covered disease.

(86) "Strongly-encrypted" means an encryption method that uses a cryptographic key with a large number of random keyboard characters.

(87) "Subscriber" means the individual responsible for payment of premiums or whose employment is the basis for eligibility for membership in a health benefit plan.

(88) "Third-party administrator (TPA)" means any person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, residents of Oregon or residents of another state from offices in Oregon, in connection with life insurance or health insurance coverage; or any person or entity who must otherwise be licensed under ORS 744.702.

(89) "Transact insurance" shall have the meaning given that term in ORS 731.146.

(90) "Trust" means a fund established by:

- (a) Two or more employers in the same or related industry; or
- (b) One or more labor unions; or
- (c) One or more employers and one or more labor unions; or
- (d) An association as described in ORS 743.522(1)(b).

(91) "Vision policy" means a health benefits plan covering only vision health care.

(92) "Voluntary reporter" means any registered or reporting entity, other than a mandatory reporter, that voluntarily elects to comply with the reporting requirements in OAR 409-025-0100 to 409-025-0170.

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 5-2012(Temp), f. 6-23-12, cert. ef. 6-1-12 thru 11-15-12; OHP 6-2012, f. 6-26-12, cert. ef. 7-9-12

409-025-0110

General Reporting Requirements

(1) Definition of "mandatory reporter"

(a) For carriers and licensed third-party administrators, OHPR shall identify mandatory reporters using information collected by DCBS including, but not limited to, data from the Health Insurance Member Enrollment Report.

(A) OHPR shall aggregate the most recent four quarters of data.

(B) OHPR shall calculate the mean total lives for each carrier and licensed third-party administrator.

(C) All carriers and licensed third-party administrators with calculated mean total lives of 5,000 or higher shall be mandatory reporters.

(b) All PBMs shall be mandatory reporters.

(c) All MCOs shall be mandatory reporters.

(d) All CCOs shall be mandatory reporters.

(e) All reporting entities with Dual Eligible Special Needs Plans in Oregon shall be mandatory reporters.

(2) Voluntary reporters may elect to participate by notifying the Administrator in writing.

(3) Mandatory and voluntary reporters shall submit healthcare claims data files for all required lines of business and shall not submit claims for any excluded lines of business. Required and excluded lines of business are specified in Schedule B.

(4) Mandatory and voluntary reporters shall comply with healthcare claims data file layout, format, and coding requirements in OAR 409-025-0120.

(5) Mandatory and voluntary reporters shall comply with healthcare claims data submission requirements in OAR 409-025-0130.

(6) Unless otherwise required by state or federal rules, regulations or statutes, mandatory and voluntary reporters shall not submit the following types of claims:

(a) Claims related to genetic tests; or

(b) Any claims subject to stricter disclosure limits imposed by state or federal rules, regulations, or statutes.

(7) OHPR shall provide written notification to all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170.

(a) Beginning March 1, 2010 OHPR shall notify all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170 during the calendar year 2010.

(b) By July 1, 2010 OHPR shall notify all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170 for the calendar year 2011.

(c) Beginning January 1, 2011, OHPR shall notify by July 1 all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170 for the following calendar year.

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 5-2012(Temp), f. 6-23-12, cert. ef. 6-1-12 thru 11-15-12; OHP 6-2012, f. 6-26-12, cert. ef. 7-9-12

Oregon Health Authority, Public Health Division

Chapter 333

Rule Caption: Changes to In-Home Care Agency licensing rules in response to 2009 and 2011 legislation.

Adm. Order No.: PH 10-2012

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 7-1-12

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Rules Adopted: 333-536-0007, 333-536-0021, 333-536-0023, 333-536-0031, 333-536-0033, 333-536-0041, 333-536-0042, 333-536-0043, 333-536-0093, 333-536-0110, 333-536-0117, 333-536-0120, 333-536-0125

Rules Amended: 333-536-0000, 333-536-0005, 333-536-0010, 333-536-0015, 333-536-0025, 333-536-0035, 333-536-0045, 333-536-0050, 333-536-0055, 333-536-0060, 333-536-0065, 333-536-0070, 333-536-0075, 333-536-0080, 333-536-0085, 333-536-0090, 333-536-0095, 333-536-0105

Rules Repealed: 333-536-0020, 333-536-0030, 333-536-0040, 333-536-0115

Subject: The Oregon Health Authority, Public Health Division is permanently adopting and amending Oregon Administrative Rules relating to in-home care agencies in response to legislation passed in 2009 (SB 158) and 2011 (HB 2650). SB 158 attempts to correct inadequate oversight due to gaps in law, inadequate resources, and clarifies statutes governing the roles and responsibilities of many facilities and agencies providing care to patients or clients. SB 158 also requires on-site surveys of all licensed health care facilities and agencies at a minimum of every three years. HB 2650 repeals provisions passed in 2009 requiring the Department of Human Services to conduct criminal background checks for home health and in-home care agencies. Home health and in-home care agencies may use private vendors to conduct criminal background checks but must comply with the provisions of ORS 443.004. The Public Health Division is required to prescribe the process for home health and in-home care agencies conducting background checks.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-536-0000

Purpose

The purpose of these rules is to establish standards for licensure of In-Home Care Agencies.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.355

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0005

Definitions

As used in OAR 333-536-0000 through 333-536-0125, the following definitions apply:

(1) "Abuse:"

(a) As it applies to an adult, includes but is not limited to:

(A) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

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(B) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(C) Abandonment, including desertion or willful forsaking of a person or the withdrawal or neglect of duties and obligations owed a person.

(D) Willful infliction of physical pain or injury.

(E) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to a person.

(F) Wrongfully taking or appropriating money or property, of knowingly subjecting a person to harm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the person to believe that the threat will be carried out.

(G) Sexual contact with a non-consenting person or with a person considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

(b) As it applies to a child, has the same meaning as "abuse" as that term is defined in ORS 419B.005.

(2) "Activities of daily living" means self-care activities that must be accomplished by an individual to meet his or her daily needs.

(3) "Agency" means In-Home Care Agency.

(4) "Branch office" means a location or site from which an in-home care agency provides services within a portion of the total geographic area served by the parent agency. The site of the branch office generally does not exceed one hour of travel time from the parent agency. The branch office is part of the in-home care agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the requirements of an in-home care agency.

(5) "Caregiver" means a person providing assistance with activities of daily living or assistance with personal care tasks, household and support services, or medication services as authorized by these rules.

(6) "Client representative" means:

(a) A parent, stepparent, foster parent, or other adult with primary caregiving responsibility for the client when the client is a child; or

(b) An individual, paid or unpaid, related or unrelated, who acts on behalf of, or cares for the client when the client is an adult.

(7) "Division" means the Public Health Division of the Oregon Health Authority.

(8) "Home health agency" has the meaning given that term in ORS 443.005.

(9) "Hospice program" has the meaning given that term in ORS 443.850.

(10) "In-home care agency" means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services as defined in ORS 443.005.

(11) "In-home care services" means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(12) "Licensed" means that the person or agency for which the term applies is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(13) "Management experience" means the administration, supervision or management of individuals in a health related field including hiring, assigning, evaluating and taking disciplinary actions.

(14) "Medication administration" means administering medications to a client or directly supervising the client who is not able or not willing to self-direct, but may be physically able to perform the tasks. Medication administration includes but is not limited to taking the client's medications from original containers and putting the medications into closed secondary containers designed and manufactured for this purpose.

(15) "Medication assistance" means helping the client who is able to self-direct with one or more steps in the process of taking medication, but does not mean medication administration as defined in these rules. Examples of medication assistance include, but are not limited to, opening the medication container, helping the client self-administer his or her medication, and assisting the client with one or more steps of medication administration at the client's direction.

(16) "Medication reminding" means providing a client with an audio, visual or oral reminder to take his or her medication when a client is able to self-direct.

(17) "Medication services" means medication assistance or medication administration but does not include medication reminding.

(18) "Nursing services" means the provision of services that are deemed to be the practice of nursing as defined by ORS 678.010. These services include but are not limited to the delegation of specific tasks of nursing care to unlicensed persons in accordance with the Oregon State Board of Nursing administrative rules, chapter 851, division 047. Nursing services are not rehabilitative or curative, but are maintenance in nature.

(19) "Parent agency" means the in-home care agency that develops and maintains administrative controls of subunits or branch offices.

(20) "Personal care services" means the provision of or assistance with tasks intended to supplement a client's own personal abilities which are necessary to accomplish the client's activities of daily living and other activities as described in OAR 333-536-0045(1), and are preventive and maintaining in nature.

(21) "Professional experience" means having a nursing, medical, therapeutic license, certificate or degree used to work in a health-related field or program or completion of a Division approved training program.

(22) "Qualified entity" means an entity whose training program has been approved by the Division.

(23) "Qualified individual" means an individual who:

(a) Has completed a Division approved training program; or

(b) Is currently licensed as a registered nurse, practical nurse, physician assistant, or pharmacist; or

(c) Is another health care professional not listed in subsection (23)(b) who has been approved by the Division to conduct training.

(24) "Registered nurse" (RN) means a person licensed under ORS chapter 678.

(25) "Schedule caregivers" means to plan appointments for caregivers to deliver specific in-home care services to clients; the times and dates of these appointments are set by the in-home care agency.

(26) "Self-direct" means to be oriented and to know:

(a) The reason why each medication is taken, i.e. for what condition;

(b) The amount or dose of medication that needs to be taken;

(c) The route the medication needs to be taken; and

(d) The time of day the medication needs to be taken.

(27) "Stable and predictable" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

(28) "Subunit" means an in-home care agency that provides for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency.

(29) "Survey" means an inspection of an applicant for an in-home care agency license or a licensed in-home care agency to determine the extent to which the applicant or in-home care agency is in compliance with state in-home care agency statutes and these rules.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.355

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0007

Classification

(1) Agencies shall be classified according to the services provided (see Table 1). An agency shall be classified as:

(a) Limited; An agency that provides personal care services that may include medication reminding but does not provide medication assistance, medication administration, or nursing services;

(b) Basic; An agency that provides personal care services that may include medication reminding and medication assistance but does not provide medication administration or nursing services;

(c) Intermediate; An agency that provides personal care services that may include medication reminding, medication assistance and medication administration but does not provide nursing services; or

(d) Comprehensive; An agency that provides personal care services that may include medication reminding, medication assistance, medication administration and nursing services.

(2) Medication services training for caregivers employed by an agency classified as Basic, Intermediate or Comprehensive shall be provided by a qualified individual or entity.

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(3) Agencies licensed by the Division must neither assume a descriptive title nor be held out under any descriptive title other than the classification title established by the Division and under which the agency is licensed. No agency licensed by the Division shall provide services or use a classification title in its advertising, publicity, or any other form of communication other than what the agency is licensed to provide.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0010

Application for Licensure

(1) An agency that establishes, conducts, or represents itself to the public as providing in-home care services must be licensed by the Division and must comply with ORS 443.305 through 443.355 and these rules. The provisions of ORS 443.305 through 443.355 do not apply to organizations licensed, registered or certified under ORS 101.030, 410.495, 443.410, 443.485, 443.725, 443.860, or 443.886. The provisions of ORS 443.305 through 443.355 do not apply to independent individuals, volunteers, family, neighbors, or to agencies offering only housekeeping or on-call staffing for facilities, or to support services provided and funded by the Department of Human Services. Entities that provide referral or matching services that link in-home care services with clients are not required to be licensed under these rules, unless they do one or more of the following:

- (a) Schedule caregivers (as defined in OAR 333-536-0005);
- (b) Assign work;
- (c) Assign compensation rates;
- (d) Define working conditions;
- (e) Negotiate for a caregiver or client for the provision of services; or
- (f) Place a caregiver with a client.

(2) Application for a license to operate an in-home care agency shall be in writing on a form provided by the Division and shall include, but is not limited to, demographic, ownership and administrative information about the agency.

(3) If an owner or administrator has direct contact with a client, the owner or administrator must submit background information to the Division in accordance with OAR 333-536-0093 for the purposes of conducting a criminal records check.

(4) If any of the information delineated in an agency's most recent application changes at a time other than the annual renewal date, an agency shall submit a revised application to the Division within 30 days of the change.

(a) An agency that submits a revised application that contains a change to any of the following must obtain Division approval prior to implementation:

- (A) Administrator;
- (B) Agency classification;
- (C) Branch and subunit; and
- (D) Geographic service area exceeding one hour's travel time.

(b) In determining whether to grant approval for changes identified in subsection (4)(a) of this rule, the Division may request agency documents or records for review to determine compliance with in-home care licensing laws and rules, or may conduct an on-site inspection.

(5) No entity shall provide in-home care services or use the term "in-home care agency" in its advertising, publicity, or any other form of communication unless it holds a current valid license as an in-home care agency in accordance with the provisions within.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0015

Review of License Application

Upon receipt of a completed initial application and the required fee, the Division shall conduct a survey in accordance with OAR 333-536-0041 of an agency or any subunit to determine if an agency or subunit is in compliance with these rules and ORS 443.305 through 443.355, and has the intent to provide in-home care services.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0021

Approval of License Application

(1) The Division shall notify an applicant in writing if a license application is approved.

(2) A license shall be issued only for an agency and person(s) named in the application and may not be transferred or assigned.

(3) The license shall be conspicuously posted in an office that is viewable by the public.

Stat. Auth.: ORS 443.340

Stat. Auth.: ORS 443.315 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0023

Denial of License Application

If the Division intends to deny a license application, it shall issue a Notice of Proposed Denial of License Application in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.325

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0025

Expiration and Renewal of License

Each license to operate an in-home care agency shall expire twelve months from the date of issue. If renewal is desired, the licensee shall make application at least 30 days prior to the expiration date upon a form prescribed by the Division.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0031

Fees

(1) The fee for an initial in-home care agency license shall be \$1,500. If the agency has subunits, the fee for an initial license shall be \$1,500 for the parent agency, plus an additional \$750 for each subunit.

(2) The fee for a renewed in-home care agency license shall be \$750. If the agency has subunits, the fee for a renewed license shall be \$750 for the parent agency, plus an additional \$750 for each subunit.

(3) If the ownership of an agency changes other than at the time of the annual renewal, the licensure fee shall be \$350, plus an additional \$350 for each subunit.

(4) All application fees are non-refundable.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0033

Denial, Suspension or Revocation of License

(1) A license for an in-home care agency may be denied, suspended or revoked by the Division when an in-home care agency has failed to comply with ORS 443.305 through 443.355 or with OAR chapter 333, division 536, including but not limited to an owner or administrator of the in-home care agency permitting, aiding or abetting any illegal act affecting the welfare of the client.

(2) The Division may deny, suspend or revoke the license of any in-home care agency for failure to comply with ORS 443.004.

(3) A failure to comply with ORS 443.305 through 443.355 includes but is not limited to:

- (a) Failure to provide a written disclosure statement to a client or a client's representative prior to in-home care services being rendered;
- (b) Failure to provide the contracted in-home care services; or
- (c) Failure to correct deficiencies identified during a Division inspection or complaint investigation.

(4) If the Division intends to suspend or revoke an agency license, it shall do so in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 and 443.325

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0035

Return of Agency License

Each license certificate in the licensee's possession shall be returned to the Division immediately upon the suspension or revocation of the license, failure to renew the license by the date of expiration, or if operation is discontinued by the voluntary action of the licensee.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

ADMINISTRATIVE RULES

333-536-0041

Surveys

(1) The Division shall, in addition to any investigations conducted pursuant to OAR 333-536-0043, conduct at least one survey of each in-home care agency prior to services being rendered and once every three years thereafter as a requirement of licensing and at such other times as the Division deems necessary.

(2) In lieu of an on-site inspection required by section (1) of this rule, the Division may accept a certification or accreditation from a federal agency or an accrediting body approved by the Division that state licensing standards have been met if an in-home care agency:

(a) Notifies the Division to participate in any exit interview conducted by the federal agency or accrediting body; and

(b) Provides copies of all documentation concerning the certification or accreditation requested by the Division.

(3) An in-home care agency shall permit Division staff access to any location from which it is operating its agency or providing services during a survey.

(4) A survey may include but is not limited to:

(a) Interviews of clients, client family members, agency management and staff;

(b) On-site observations of clients and staff performance;

(c) Review of documents and records;

(d) Client audits.

(5) An in-home care agency shall make all requested documents and records available to the surveyor for review and copying.

(6) Following a survey, Division staff may conduct an exit conference with an agency owner, administrator, or designee. During an exit conference, Division staff shall:

(a) Inform the agency owner, administrator or designee of the preliminary findings of the inspection; and

(b) Give the owner, administrator or designee a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(7) Following a survey, Division staff shall prepare and provide the agency owner or administrator specific and timely written notice of the findings.

(8) If the findings result in a referral to another regulatory agency, Division staff shall submit the applicable information to that referral agency for its review and determination of appropriate action.

(9) If no deficiencies are found during a survey, the Division shall issue written findings to the agency owner or administrator indicating that fact.

(10) If deficiencies are found, the Division shall take informal or formal enforcement action in accordance with OAR 333-536-0117 or 333-536-0120.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0042

Complaints

(1) Any person may make a complaint verbally or in writing to the Division regarding an allegation as to the care or services provided by an in-home care agency or violations of in-home care agency laws or regulations.

(2) The identity of a person making a complaint will be kept confidential.

(3) Information obtained by the Division during an investigation of a complaint or reported violation is confidential and not subject to public disclosure under ORS 192.410 through 192.505.

(4) Upon conclusion of an investigation, the Division may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any client of an in-home care agency. The Division may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of an in-home care agency.

(5) An employee with knowledge of a violation of law or rules of the Division shall use the reporting procedures established by an in-home care agency before notifying the Division or other state agency of the inappropriate care or violation, unless the employee:

(a) Believes a client's health or safety is in immediate jeopardy; or

(b) Files a complaint in accordance with section (1) of this rule.

(6) If a complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the Division shall refer the matter to that agency.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315, 443.340 & 443.355

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0043

Investigations

(1) An unannounced complaint investigation shall be carried out within 45 calendar days of receipt of the complaint and may include, but is not limited to:

(a) Interviews of the complainant, caregivers, clients, a client's representative, a client's family members, witnesses, and agency management and staff;

(b) On-site observations of the client(s), staff performance, client environment; and

(c) Review of documents and records.

(2) Should the complaint allegation represent an immediate threat to the health or safety of a client, the Division shall notify appropriate authorities to ensure a client's safety, and an investigation shall be commenced within two working days.

(3) An agency shall permit Division staff access to the agency during an investigation.

(4) An agency shall cooperate with investigations of allegations of client abuse and neglect conducted by the Department of Human Services, Oregon Health Authority, Adult Protective Services, and other agencies such as law enforcement.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0045

Services Provided

(1) The services provided by an agency must include the safe provision of or assistance with, personal care tasks related to one or more of the following:

(a) Bathing;

(b) Personal grooming and hygiene;

(c) Dressing;

(d) Toileting and elimination;

(e) Mobility and movement;

(f) Nutrition/hydration and feeding;

(g) Medication reminding.

(2) An agency may provide medication reminding services for clients who can self-direct as defined in OAR 333-536-0005 if the agency:

(a) Documents the client's knowledge of the following information using a standardized form required by the Division:

(A) The reason why each medication is taken;

(B) The amount or dose of each medication that needs to be taken;

(C) The route the medication needs to be taken; and

(D) The time of day each medication needs to be taken.

(b) Retains a copy of the standardized form, signed by the client, where an agency has determined the client can self-administer medications.

(3) An agency must evaluate whether a client can continue to self-direct at a minimum of every 90 days. If it is determined that a client can no longer self-direct, arrangements shall be made to transfer the client to an agency with a higher license classification within 30 days if the agency providing current services is not classified as such.

(4) All documentation required in sections (2) and (3) of this rule shall be kept in the client's record.

(5) In addition to personal care tasks, an agency may also provide one or more of the following services upon approval by the Division:

(a) Non-injectable medication assistance;

(b) Non-injectable medication administration; or

(c) Nursing services.

(6) An agency may also provide housekeeping and other supportive services. Such tasks include, but are not limited to:

(a) Housekeeping;

(b) Laundry;

(c) Shopping and errands;

(d) Transportation; and

(e) Arranging for medical appointments.

(7) If an agency has clients who receive only housekeeping and support services, the agency is not required to comply with the following rules for those specific clients: OAR 333-536-0065, 333-536-0070, 333-536-0075, 333-536-0080, 333-536-0085 and 333-536-0090.

(8) Services described in this rule shall be primarily provided at the client's residence. In addition, the services may be rendered at nonresidence locations as specified in the client's service plan.

Stat. Auth.: ORS 443.340

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Stats. Implemented: ORS 443.315 & 443.340
Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0050

Organization, Administration, and Personnel

(1) An agency shall clearly set forth in writing the organization, services provided, administrative control, and lines of authority and responsibility from the owner to the client-care level.

(a) An agency shall not assign administrative and supervisory functions to another agency or organization.

(b) An agency shall control and be responsible for all services provided.

(c) An agency shall be required to maintain administrative and professional oversight to ensure the quality of services provided.

(d) All agency records must be kept separate and distinct from other business entities.

(2) Geographic service area:

(a) An agency shall identify in writing the geographic area in which it generally intends to provide services.

(b) The geographic service area shall be within a distance from a parent agency which ensures appropriate and timely delivery and supervision of services with the following exception:

(A) An agency caregiver may accompany a client outside the geographic service area if all of the following conditions are met:

(i) A client has requested an agency caregiver to accompany the client; and

(ii) The travel plans are described and documented in a client's service plan.

(B) An agency shall require a caregiver who accompanies a client outside the geographic service area to:

(i) Document all services and care provided to the client on a daily basis;

(ii) Report to the agency administrator or designee either by phone or e-mail the status of the client before leaving the geographic service area and immediately upon return;

(iii) Check-in with the agency administrator no less than once per week if the travel results in the client and caregiver being gone for more than one week; and

(iv) Be certified in Cardiopulmonary Resuscitation (CPR).

(C) If the client's condition changes while traveling, the caregiver must contact the agency administrator or designee immediately.

(D) An agency shall develop policies and procedures which address what caregivers must do when their client's condition changes while the client and caregiver are out of the agency's geographic service area.

(3) If an agency operates a branch office:

(a) The branch office shall be located within the parent agency's geographic service area at a distance from the parent agency that generally does not exceed one hour's travel time.

(b) The branch office shall be operated under the management and supervision of the parent agency. Administrative and personnel functions must be retained at the parent agency. The branch office must not function as an independent agency.

(c) Services must not be provided from the branch office until the branch office has been added to the license of the parent agency in accordance with Division procedures.

(4) If an agency provides services from an office generally exceeding one hour of travel time located outside of a parent agency's geographic service area, that office will constitute a subunit of the agency. If the agency has subunits:

(a) The subunit shall have its own staff, separate from parent agency staff, and shall operate independently of the parent agency.

(b) The subunit shall independently meet all licensing requirements, be separately licensed from the parent agency, and pay a separate licensure fee.

(5) An agency's owner or designee shall:

(a) Assume full legal, financial, and overall responsibility for the agency's operation; and

(b) Serve as, or employ, a qualified administrator.

(6) An administrator shall meet the following qualifications:

(a) Possess a high school diploma or equivalent; and

(b) Have at least two years of professional or management experience in a health-related field or program or have completed a training program approved by the Division.

(7) An administrator or designee shall be accessible and available during all hours in which services are being provided to clients and must be

able to be on site at the parent agency location within a timely manner as needed. An administrator shall assign, in writing, a qualified designee to act as administrator in his or her temporary absence.

(8) An administrator or designee shall be responsible for:

(a) Organizing and directing the agency's ongoing functions;

(b) Developing and implementing written and current policies and procedures necessary to direct the administrative, personnel, and client care operations of the agency, including but not limited to the requirements in these rules;

(c) Ensuring the completeness and accuracy of all information provided to the public regarding the agency and its services;

(d) Ensuring the provision of safe and appropriate services in accordance with written service plans;

(e) Ensuring that all individuals providing services for the agency meet the qualification, orientation, competency, training, and education requirements in the rules;

(f) Ensuring that personnel and client care practices are consistent with the agency's written policies and procedures.

(g) Ensuring that client care assignments are based on the caregiver's abilities, skills, and competence;

(h) Ensuring that the agency does not accept or retain clients for whom it does not have the capabilities or resources to provide services;

(i) Ensuring the timely internal investigation of complaints, grievances, accidents, incidents, medication or treatment errors, and allegations of abuse or neglect involving individuals providing services for the agency. An agency shall maintain in its records documentation of the complaint or event, the investigation, the results, and actions taken;

(j) Ensuring the timely reporting of allegations of abuse or neglect to the appropriate authority that includes but is not limited to the Department of Human Services, Oregon Health Authority, Public Health Division, or local law enforcement agency.

(9) Personnel records for all caregiver, nursing staff, and employees shall include at a minimum the following:

(a) Evidence of pre-employment screening;

(b) Evidence that the in-home care agency has conducted a criminal records check on all subject individuals in accordance with OAR 333-536-0093.

(A) The in-home care agency must ensure that a criminal records check has been conducted on all subject individuals employed by or volunteering for an agency on or after July 6, 2011.

(B) If the screening indicates that a subject individual has been convicted for crimes against an individual or property, the agency shall make a determination of the individual's fitness to provide care to clients in accordance with OAR 333-536-0093.

(c) Evidence that all position qualifications have been met, including required licensure;

(d) Current position job description(s) signed by the individual(s);

(e) Evidence of orientation, training, competency, and ongoing education;

(f) Evidence of annual performance evaluations; and

(g) Evidence of a valid driver's license with current auto insurance for each individual whose duties include transporting clients in motor vehicles.

(10) An agency shall comply with all applicable state and local laws, statutes, rules, and ordinances.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0055

Disclosure, Screening, and Acceptance of Clients

(1) When an individual is accepted for agency service, a written disclosure statement shall be signed by the client or the client's representative. Evidence that the disclosure statement was given to the client or the client's representative shall be incorporated into the client's record.

(2) The disclosure statement must include the following:

(a) A description of the license classification and the services offered by the agency according to OAR 333-536-0045, including the extent of registered nurse involvement in the agency's operations and whether nursing services as described in OAR 333-536-0080 are provided;

(b) If the agency provides medication reminding or medication services, the qualifications of the individual(s) providing oversight of the agency's medication administration systems and the medication training and demonstration;

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(c) A clear statement indicating that it is not within the scope of the agency's license to manage the medical and health conditions of clients who are no longer stable or predictable;

(d) The qualifications and training requirements determined by the agency for individuals providing direct client care;

(e) The charges for the services provided by the agency;

(f) A description of how the service plans are developed and reviewed and the relationship between the service plans and the cost of services;

(g) A description of billing methods, payment systems, and due dates;

(h) The policy for client notification of increases in the costs of services;

(i) The agency's refund policy;

(j) Criteria, circumstances, or conditions which may result in termination of services by the agency and client notification of such;

(k) Procedures for contacting the agency administrator or designee during all of the hours during which services are provided; and

(l) A copy of the client's rights as written in OAR 333-536-0060.

(3) An agency administrator or designee shall conduct an initial screening to evaluate a prospective client's service requests and needs prior to accepting the individual for service. The extent of the screening shall be sufficient to determine the ability of the agency to meet those requests and needs based on the agency's overall service capability. The screening shall be documented, dated and signed by the individual who conducted it.

(4) An agency shall only accept or retain individuals for services for whom it can ensure the following:

(a) The agency has the capability to meet the in-home care needs of the individual;

(b) The agency employs a sufficient number of trained and competent staff and has adequate resources to provide the requested or needed services; and

(c) The agency is able to coordinate its services with the care and services provided by other organizations and individuals.

(5) The agency shall notify the client, or the client's representative, of the need for a referral for medical or health services if the client's medical or health condition is no longer stable and predictable. The agency may continue to provide in-home care services in the client's residence, but must not manage, or represent itself as able to manage a client's medical or health condition that is not stable and predictable.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0060

Clients' Rights

(1) The agency owner or administrator shall ensure that the agency recognizes and protects the following rights of each client:

(a) The right to be treated with dignity and respect;

(b) The right to be free from theft, damage, or misuse of one's personal property;

(c) The right to be given the informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;

(d) The right to be free from neglect of care, verbal, mental, emotional, physical, and sexual abuse;

(e) The right to be free from financial exploitation;

(f) The right to be free from physical and chemical restraints;

(g) The right to voice grievances or complaints regarding services or any other issue without discrimination or reprisal for exercising such rights;

(h) The right to be free from discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(i) The right to participate in planning of the services and care to be furnished, any changes in the services and care, the frequency of visits, and cessation of services;

(j) The right to have access to his or her client record;

(k) The right to have client information and records confidentially maintained by the agency;

(l) The right to be advised in writing, before care is initiated, of the charges for the services to be furnished, and the amount of payment that will be required from the client;

(m) The right to a written 30-day notice of termination of services by the agency that specifies the reason(s) for the termination with the following exceptions:

(A) The right to immediate oral or written notice of termination of services by the agency at the time the agency determines that the safety of its staff or the client cannot be ensured. If oral notice is given, the agency

must also subsequently provide the client a written confirmation of the oral notice of termination of services.

(B) The right to a written 48-hour notice of termination of services by the agency in the event of non-payment in accordance with the agency's disclosed payment requirements.

(2) An agency shall provide each client with a written notice of the client's rights as a part of the disclosure statement, prior to furnishing care to a client. The client's rights notice shall also include:

(a) Procedures for filing a grievance or complaint with the agency;

(b) Procedures for filing a grievance or complaint with the Division, along with the telephone number and contact information of the Division; and

(c) Notice that the Division has the authority to examine clients' records as part of the Division's regulation and evaluation of the agency.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0065

Service Plan

For clients receiving services described in OAR 333-536-0045, the services provided shall be in accordance with a written service plan developed in conjunction with a client or the client's representative based on the client's or the client's representative's request and an evaluation of the client's physical, mental, and emotional needs. The service plan must be consistent with the agency's capabilities.

(1) The agency administrator or designee shall conduct an initial evaluation of the client. The evaluation must be documented, dated, and signed by the individual who conducted the evaluation, and maintained in the client's agency record.

(2) The agency administrator or designee, in conjunction with the client or the client's representative, shall complete a written service plan within seven days after the initiation of services. The agency administrator or designee shall ensure that the service plan includes a list of individuals participating in development of the plan. The agency administrator or designee shall also sign and date the service plan when it is complete and acceptable to all individuals participating in development of the plan.

(3) The completed service plan shall be client-directed or client representative-directed and include at least the following:

(a) The schedule for the provision of services specifying a range of hours for services per month;

(b) The services to be provided, specifying the tasks to be conducted; and

(c) Pertinent information about the client's needs in relation to the services to be provided to ensure the provision of safe and appropriate care.

(4) A client or a client's representative may request changes in the service plan. All changes must be communicated to the caregiver(s) and documented.

(5) An agency shall maintain the original service plan and all updated service plans in each client's agency record. Complete and legible copies of the service plan shall be given to the client or client's representative upon request.

(6) The administrator or designee must conduct an initial visit at the client's residence within 30 days of the initiation of services to evaluate compliance by the caregiver(s) with the service plan and to assess the client's satisfaction. The initial visit must occur between the 7th and 30th day. An initial visit is not required when:

(a) A client cancels service on or before the 30th day;

(b) A client is residing in a nursing facility or a hospital; or

(c) A client refuses.

(7) The administrator or designee must conduct quarterly monitoring visits after the initial site visit. Quarterly monitoring visits may occur by phone or by other electronic means at the discretion of the administrator or designee under the following circumstances: impending discharge from services; relocation to a facility; when minimal services, such as one shift a month, would cause the client to incur undue financial burden; or, due to other circumstances that are justified in chart note(s). In no case shall the time between the in-person monitoring visits exceed a six-month period.

(8) Each monitoring visit to observe and report on the client's status must be documented, dated, and signed by the administrator or designee. The caregiver may be present during the monitoring visit.

(9) The administrator or designee must determine and document during a monitoring visit:

(a) Whether appropriate and safe techniques have been used in the provision of care;

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- (b) Whether the service plan has been followed as written;
 - (c) Whether the service plan is meeting the client's needs or needs to be updated;
 - (d) Whether the caregiver has received sufficient training for the client;
 - (e) Whether the client is satisfied with his or her relationship with the caregiver(s); and
 - (f) Whether appropriate follow-up is necessary for any identified issues or problems.
- (10) If services are provided in a non-residential setting in accordance with the service plan, monitoring visits shall take place in the same setting that services are provided and must conform to the requirements set forth in this rule.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.315 & 443.340
Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0070

Caregiver Qualifications and Requirements

The personal care provided by an agency shall be rendered by qualified and trained employees under the supervision of the administrator or designee. The services shall be provided as requested by the client or client's representatives in accordance with these rules and the service plan.

(1) The agency owner or administrator shall ensure that the agency has qualified and trained employees sufficient in number to meet the needs of the clients receiving services.

(2) Caregivers must be at least 18 years of age and shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other agency staff.

(3) Caregivers shall complete an agency-specific orientation, conducted by the agency administrator or designee, before independently providing services to clients.

(a) The orientation shall include, but not be limited to, the following subject areas:

- (A) Caregivers' duties and responsibilities;
- (B) Clients' rights;
- (C) Ethics, including confidentiality of client information;
- (D) The agency's infection control policies;
- (E) A description of the services provided by the agency;
- (F) Assignment and supervision of services;
- (G) Documentation of client needs and services provided;
- (H) The agency's policies related to medical and non-medical emergency response;
- (I) The roles of, and coordination with, other community service providers;
- (J) Information about what constitutes medication reminding and its specific limitations; and
- (K) Other appropriate subject matter based on the needs of the special populations served by the agency.

(b) The content of the orientation, the date(s) and length, and the name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(4) Caregivers shall complete appropriate training and must have their competency evaluated and documented by the administrator or designee before independently providing services to clients.

(a) Caregiver training shall be based on the services provided by the in-home care agency, including, as applicable, the following topics:

- (A) Caregivers' duties and responsibilities;
- (B) Recognizing and responding to medical emergencies;
- (C) Dealing with adverse behaviors;
- (D) Nutrition and hydration, including special diets and meal preparation and service;
- (E) Appropriate and safe techniques in personal care tasks;
- (F) Methods and techniques to prevent skin breakdown, contractures, and falls;
- (G) Hand washing and infection control;
- (H) Body mechanics;
- (I) Maintenance of a clean and safe environment;
- (J) Fire safety and non-medical emergency procedures;
- (K) Assisting clients with self-directed or client representative-directed non-injectable medication administration; and
- (L) Providing basic non-injectable medication services as described in OAR 333-536-0075.

(b) The content of the training, the date(s) and length, and name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(c) Caregivers with proof of a current Oregon health-care related license or certificate are exempt from in-home caregiver training.

(d) Caregivers moving from one office to another in the same in-home care agency are not subject to additional training requirements, provided previous training is documented.

(e) Caregivers who have completed training previously, and have documentation of that training, shall have their competency evaluated by an agency representative, and any potential training may be limited to areas requiring improvement after the evaluation.

(f) Documentation of training and competency evaluation shall be included in the caregiver's personnel record.

(5) Caregivers shall receive a minimum of six hours of education related to caregiver duties annually. If a caregiver provides medication administration to a client, one additional hour of education shall be required annually related to providing medication administration.

(6) Caregiver Selection and Review of Service Plan.

(a) The skills of a caregiver must be matched with the care needs of a client. The administrator or designee must assign caregivers to specific clients based on the care needs of the clients and the skills of the caregivers.

(b) The client's service plan must be reviewed with each caregiver before the initial delivery of client care. The date of the review(s), the signature or a unique electronic identifier such as an individual's log-in and password into a computer program or an electronic stamp of the agency administrator or designee and the list of assigned caregivers must be documented.

(c) Caregivers must provide services to clients in accordance with the service plans.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.315 & 443.340
Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0075

Medication Services

(1) If an agency has been approved to provide non-injectable medication services, the services shall be rendered by persons who meet the requirements of section (10) of this rule. The services shall be provided as requested by the client or client's representatives in accordance with these rules, accepted standards of medication practice, and the service plan.

(2) If a client representative or family member performs the task of filling secondary non-injectable medication containers from which an agency caregiver is to administer medication, an agency shall:

(a) Obtain a signed agreement from the client representative or family member that identifies their obligation to:

(A) Provide a list of the client's medication and a physical description of each with any special instructions. The list must be updated when changes to the client's medication regimen are made;

(B) Keep the original labeled medication containers in the home for verification should the caregiver have questions; and

(C) Use closed non-injectable medication secondary containers designed and manufactured for that purpose that meet the labeling requirements of subsection (7)(d) of this rule.

(3) Agency staff shall obtain written or telephone orders from a physician or other legally recognized practitioner for all medications managed or administered by an agency under this rule and for any changes to those medications.

(a) Written orders shall be signed or confirmed by a physician or practitioner.

(b) Telephone orders shall be immediately recorded, dated, and signed by agency staff, and transmitted within 72 hours to the physician or practitioner for confirmation. The orders that have been signed or confirmed by the physician or practitioner shall be incorporated into the client's record within 30 days.

(4) An agency owner or administrator shall be responsible for developing and implementing safe and appropriate medication administration delivery systems and policies and procedures that include, but are not limited to:

(a) Provisions to ensure that each client receives the right medication, in the right amount, by the right route, and at the right time;

(b) Provisions to ensure that the caregivers are informed about the potential adverse reactions, side effects, drug-to-drug interactions and food-to-drug interactions, and contraindications associated with each client's medication regimen;

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(c) Provisions to ensure that the caregivers promptly report problems or discrepancies related to each client's medication regimen to the caregivers' supervisor, agency administrator or designee;

(d) Provisions to ensure storage of medications at appropriate temperatures based on the manufacturer's recommendations; and

(e) Provisions to ensure the security and integrity of narcotics and controlled substances.

(5) A client's service plan must specify the medication tasks to be performed.

(6) Records for medication administration shall include, but are not limited to, the name of each medication, the dosage to be administered, the route of administration, the frequency of administration, client medication allergies and sensitivities, client specific indicators for administration of as needed medications and other special instructions necessary for safe and appropriate administration.

(7) Packaging and labeling:

(a) Prescription medications shall be in the original pharmacy containers and clearly labeled with the pharmacists' labels.

(b) Samples of medications received from the physician or practitioner shall be in the original containers and have the original manufacturers' labels.

(c) Over-the-counter medications shall be in the original containers and have the original manufacturers' labels.

(d) Secondary containers and all removable compartments must be labeled with the client's name, the specific time the medications in each compartment are to be administered, the date and time the secondary container was filled, and the name of the individual who filled the container.

(e) Liquid and non-pill medications that cannot be put in secondary containers shall be appropriately labeled.

(8) The provision of medication tasks as described in this rule shall be documented by the individuals performing the tasks. The documentation shall include the tasks completed, the date and signature of the individual(s) performing the task(s), and shall be maintained in accordance with agency policies and procedures.

(9) Visits by a registered nurse to evaluate a client's medication regimen and the provision of medication administration services shall be conducted and documented at least every 90 days for each client receiving medication administration services.

(10) Agency caregivers assigned to provide medication services must be given basic non-injectable medication training before providing the services. The medication training must include successful return demonstrations of non-injectable medications tasks by the caregivers.

(a) The medication training shall include at least the following areas:

(A) Medication abbreviations;

(B) Reading medication orders and directions;

(C) Reading medication labels and packages;

(D) Setting up medication labels and packages;

(E) Administering non-injectable medications;

(i) Pill forms, including identification of pills that cannot be crushed;

(ii) Non-injectable liquid forms, including those administered by syringe or dropper and eye and ear drops;

(iii) Suppository forms; and

(iv) Topical forms.

(F) Identifying and reporting adverse medication reactions, interactions, contraindications and side effects;

(G) Infection control related to medication administration; and

(H) Techniques and methods to ensure safe and accurate medication administration.

(b) Prior to providing medication services, caregivers shall demonstrate appropriate and safe techniques in the provision of medication tasks described in this rule.

(c) The content of the medication training, the dates and length of training, the identity of the qualified individual or qualified entity, evidence of successful return demonstrations, and the instructor's statement that the caregiver has been evaluated to be competent to provide the medication services described in this rule shall be clearly documented for each caregiver and maintained in the agency's personnel records.

(d) An individual with a current Oregon State Board of Nursing medication aide (CMA) certification is exempt from the training requirements in this rule.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0080

Nursing Services

(1) If an agency has been approved to provide nursing services, the services must be provided by an Oregon-licensed registered nurse employed by the agency and provided only to a client whose medical condition and health status is stable and predictable. The services shall be provided as requested by a client or a client's representative and shall be in accordance with these rules, the applicable administrative rules of the Oregon State Board of Nursing (OAR chapter 851, division 047), and the service plan.

(2) Delegation of specific tasks of nursing care to unlicensed persons shall be conducted and documented by the registered nurse as required by the Oregon State Board of Nursing administrative rules chapter 851, division 047. A client's record shall contain documentation that all requirements within those rules have been met, including but not limited to: assessment, instruction, observation, supervision, and re-evaluation.

(3) A client's service plan shall include current identification of the delegated specific task(s) of nursing care to be provided and shall specify the caregivers to whom the task(s) have been delegated.

(4) The provision of nursing services as described in this rule shall be documented by the individual(s) providing the service(s) or performing the task(s). The documentation shall include the services(s) or task(s) completed, the date and signature of the individual(s) performing the service(s) or task(s), and shall be maintained in accordance with an agency's policies and procedures.

(5) For all medications and medical treatments managed or administered by an agency under this rule, and for any changes to those medications or medical treatments, a registered nurse shall obtain written or telephone orders from a physician or other legally recognized practitioner.

(a) Written orders shall be signed or confirmed by a physician or practitioner.

(b) Telephone orders shall be immediately recorded, dated, and signed by the registered nurse, and transmitted within 72 hours to the physician or practitioner for confirmation. The orders that have been signed or confirmed by the physician or practitioner shall be incorporated into the client's record within 30 days.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0085

Client Records

(1) A client record shall be maintained for every client served by an agency, unless the client receives only housekeeping or support services, and shall be maintained in the agency's office.

(2) A legible, reproducible client record shall include at least the following:

(a) Identification data;

(b) Referral and intake information;

(c) Start-of-service date;

(d) Screening and disclosure documents and documentation required by these rules;

(e) Clients' rights documentation required by these rules;

(f) All client evaluation and assessment documentation;

(g) Client service plan and updates;

(h) Documentation of all services provided;

(i) Service and financial agreement signed by a client or a client's representative before the initiation of services that specifies the services to be provided in accordance with the service plan, and the costs for those services;

(j) End-of-services date; and

(k) End-of-service summary, including the dates of service and the disposition of the client.

(3) All entries and documents in the record must be recorded in ink, typescript, or computer-generated.

(4) All entries in a client's record must be dated and signed, or otherwise authenticated by the person making the entry. For purposes of this rule, authenticated means verification by the author that an entry in the client record is genuine. Electronic authentication is acceptable as long as there is a process for reconstruction of the information and there are safeguards to prevent unauthorized access to the records.

(5) A client record shall be maintained in a manner that renders it easily retrievable.

(6) Reasonable precautions must be taken to protect a client's record and information from unauthorized access, fire, water, and theft.

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(7) In an effort to coordinate services and care with other providers, including but not limited to, hospice, home health, and family members, as required in OAR 333-536-0055(4)(c), charting notes within a client's home may be shared, as permitted by law.

(8) Authorized employees of the Division shall be permitted to review client records upon request. Photocopies of the records shall be made upon request.

(9) All clients' records shall be kept for a period of at least seven years after the date of last end-of-service.

(10) Clients' records are the property of the agency.

(11) If an agency changes ownership, all clients' records shall remain in the agency, and it shall be the responsibility of the new owner to protect and maintain these records.

(12) Before an agency terminates its business, the agency shall notify the Division where the clients' records will be stored.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0090

Quality Improvement

An agency shall establish and maintain an effective, agency wide quality assessment and performance improvement program that evaluates and monitors the quality, safety and appropriateness of services provided by the agency, and shall include at a minimum:

(1) A method to identify, analyze and correct adverse events;

(2) A method to select and track quality indicators by high risk, high volume, problem prone areas and by the effect on client safety and quality of care;

(3) The quality improvement activities shall be conducted by a committee comprised of, at a minimum, agency administrative staff, an agency caregiver, and if the agency is classified as an intermediate or comprehensive agency, an agency registered nurse; and

(4) Quality improvement activities shall be conducted and documented at least quarterly.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0093

Criminal Records Checks

(1) For the purposes of this section, the following definitions apply:

(a) "Direct contact with" means to provide in-home care services and includes meeting in person with a potential or current client to discuss services offered by an agency or other matters relating to the business relationship between an agency and client;

(b) "Disqualifying condition" means a non-criminal personal history issue that makes an individual unsuitable for employment, contracting or volunteering for an agency, including but not limited to discipline by a licensing or certifying agency, or drug or alcohol dependency;

(c) "Subject individual" (SI) means an individual on whom an agency may conduct a criminal records check and from whom an agency may require fingerprints for the purpose of conducting a national criminal records check, including:

(A) An employee or prospective employee;

(B) A temporary worker, volunteer or owner of an agency who has direct contact with an agency client or potential client; and

(C) A prospective temporary worker, or volunteer or owner who may have direct contact with an agency client.

(d) "Vendor" means a researcher or company hired to provide a criminal records check on a subject individual.

(e) "Weighing test" means a process in which an agency considers available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

(2) An agency shall conduct a criminal records check before hiring an SI and before allowing an SI to volunteer to provide services on behalf of the agency, if an SI will have direct contact with a client of the agency.

(3) An SI who has or will have direct contact with a recipient of in-home care services may not be employed or volunteer with an agency in any capacity if the criminal records check conducted reveals the SI has been convicted of a crime as described in ORS 443.004(3).

(4) An agency shall have a policy on criminal records check requirements that shall include weighing test actions should the records check screening indicate that an SI has been convicted for crimes against an indi-

vidual or property other than those identified in ORS 443.004(3). The policy must include the following provisions for performing a weighing test:

(a) The agency shall consider circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:

(A) The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions;

(B) The age of the SI at the time of the potentially disqualifying convictions or conditions;

(C) Facts that support the convictions or potentially disqualifying conditions; and

(D) Passage of time since commission of the potentially disqualifying convictions or conditions.

(b) Other factors that should be considered when available include but are not limited to:

(A) Other information related to criminal activity including charges, arrests, pending indictments and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history;

(B) Periods of incarceration;

(C) Status of and compliance with parole, post-prison supervision or probation;

(D) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions;

(E) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions;

(F) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior;

(G) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(i) History of high school, college or other education related accomplishments;

(ii) Work history (employee or volunteer);

(iii) History regarding licensure, certification or training for licensure or certification; or

(iv) Written recommendations from current or past employers;

(H) Indication of the SI's cooperation, honesty or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(c) An agency shall consider the relevancy of an SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will work, especially, but not exclusively:

(A) Access to medication;

(B) Access to clients' personal information;

(C) Access to vulnerable populations.

(5) An agency shall document the weighing test and place in the employee's file.

(6) A criminal records check shall be performed by:

(a) The Department of Human Services, Background Check Unit; or
(b) A vendor that:

(A) Is accredited by the National Association of Professional Background Screeners (NAPBS); or

(B) Meets the following criteria:

(i) Has been in business for at least two years;

(ii) Has a current business license and private investigator license, if required in the company's home state; and

(iii) Maintains an errors and omissions insurance policy in an amount not less than \$1 million.

(7) An agency may use the Oregon State Police, Open Records Unit in order to fulfill the state records requirement for a criminal records check, however, an agency must still complete a nationwide check through a qualified vendor.

(8) A criminal records check must include the following:

(a) Name and address history trace;

(b) Verification that the SI's records have been correctly identified, via date of birth check and Social Security number trace;

(c) A local criminal records check, including city and county records for SI's places of residence for the last seven years;

(d) A nationwide multijurisdictional criminal database search, including state and federal records;

(e) A nationwide sex offender registry search;

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(f) The name and contact information of the vendor who completed the records check;

(g) Arrest, warrant and conviction data, including but not limited to:

(A) Charge(s);

(B) Jurisdiction; and

(C) Date.

(h) Source(s) for data included in the report.

(9) An agency shall perform and document a query of an SI with the National Practitioner Data Bank (NPDB) and the List of Excluded Individuals and Entities (LEIE).

(10) All criminal records checks conducted under this rule shall be documented in writing and made part of the agency's personnel files.

(11) An agency that has a contract with the Department or Authority for the provision of in-home care services on or after July 1, 2012 and who is subject to the Department's criminal records check rules does not have to comply with section 12) of this rule.

(12) For an SI hired to work or volunteer for an agency on or after July 6, 2011, an agency shall have until October 1, 2012 to ensure that the agency is in compliance with section (3) of this rule.

(13) On or after July 1, 2012 an agency shall ensure that a criminal records check is performed on an SI every three years from the date of the SI's last criminal records check in accordance with these rules.

(14) Notwithstanding sections (12) and (13) of this rule, the Division and not the agency shall conduct a criminal records check on an owner or administrator of any agency who is subject to a criminal records check under subsection (1)(c) of this rule. The Division shall conduct a criminal records check:

(a) At the time of application for a person who applies for a license on or after July 1, 2012 and every three years thereafter.

(b) By July 1, 2013 for an agency that is licensed on or before July 1, 2012, and every three years thereafter.

Stat. Auth.: ORS 181.534, 443.004 & 443.340

Stats. Implemented: ORS 443.004 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0095

Waivers

(1) While all agencies are required to maintain continuous compliance with the Division's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. Requests for exceptions to the rules must:

(a) Be submitted to the Division in writing;

(b) Identify the specific rule for which an exception is requested;

(c) Indicate the special circumstances relied upon to justify the exception;

(d) Identify what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed exception is desirable to maintain or improve the health and safety of the clients, and will not jeopardize client health and safety; and

(f) Identify the proposed duration of the exception.

(2) Upon finding that an agency has satisfied the condition of this rule, the Division may grant an exception.

(3) An agency may implement an exception only after receipt of written approval from the Division.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0105

Operating Without a License

If an agency is found to be operating without a valid license, the agency must, within 14 days of the receipt of an injunction obtained by the Division pursuant to ORS 443.327:

(1) Inform its clients that the agency can no longer provide services;

(2) Refund all fees collected from the clients for services not rendered; and

(3) Cease providing services to clients.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315, 443.325, 443.327 & 443.340

Hist.: PH 14-2007, f. 12-19-07, cert. ef. 1-1-08; PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0110

Violations

In addition to non-compliance with any law that governs an in-home care agency, it is a violation to:

(1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit Division staff access to the agency, its documents or records;

(2) Fail to implement an approved plan of correction;

(3) Refuse or fail to comply with an order issued by the Division;

(4) Refuse or fail to pay a civil penalty;

(5) Fail to comply with rules governing the storage of records following the closure of an agency;

(6) Fail to report suspected abuse of elderly persons as defined in ORS 124.050;

(7) Fail to return a license as provided in OAR 333-536-0035; or

(8) Operate without a license.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0117

Informal Enforcement

(1) If during an investigation or survey Division staff document violations of in-home care licensing rules or laws, the Division may issue a statement of deficiencies that cites the law or rule alleged to have been violated and the facts supporting the allegation.

(2) Upon receipt of a statement of deficiencies, an agency shall be provided an opportunity to dispute the Division's survey findings but must still comply with sections (3) and (4) of this rule.

(a) If an agency desires an informal conference to dispute the Division's survey findings, the agency shall advise the Division in writing within 10 business days after receipt of the statement of deficiencies. The written request must include a detailed explanation of why the agency believes the statement of deficiencies is incorrect.

(b) An agency may not seek a delay of any enforcement action against it on the grounds the informal dispute resolution has not been completed.

(c) If an agency is successful in demonstrating the deficiencies should not have been cited, the Division shall reissue the statement of deficiencies, removing such deficiencies and rescinding or modifying any remedies issued for such deficiencies. The reissued statement of deficiencies shall state that it supersedes the previous statement of deficiencies and shall clearly identify the date of the superseded statement of deficiencies.

(3) A signed plan of correction must be mailed to the Division within 10 business days from the date the statement of deficiencies was received by the agency. A signed plan of correction will not be used by the Division as an admission of the violations alleged in the statement of deficiencies.

(4) An agency shall correct all deficiencies within 60 days from the date of the exit conference, unless an extension of time is requested from the Division. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(5) The Division shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Division, the Division shall notify the agency owner or administrator in writing:

(a) Identifying which provisions in the plan the Division finds unacceptable;

(b) Citing the reasons the Division finds the provisions unacceptable; and

(c) Requesting that the plan of correction be modified and resubmitted no later than 10 business days from the date notification of non-compliance was received by the agency owner or administrator.

(6) If the agency does not come into compliance by the date of correction reflected on the plan of correction or 60 days from the date of the exit conference, whichever is sooner, the Division may propose to deny, suspend or revoke the agency license or impose civil penalties.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315, 443.325 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0120

Formal Enforcement

(1) If during an investigation or survey Division staff document a substantial failure to comply with in-home care licensing laws or rules, or if an agency fails to pay a civil penalty imposed under ORS 443.325 and these rules, the Division may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(2) The Division may issue a Notice of Imposition of Civil Penalty for violations of in-home care licensing laws.

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(3) At any time the Division may issue a Notice of Emergency License Suspension under ORS 183.430(2).

(4) If the Division revokes an agency license, the order shall specify when, if ever, the agency may reapply for a license.

(5) The Division may reissue an agency license that has been suspended or revoked after the Division determines that compliance with these rules has been achieved.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.315, 443.325 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

333-536-0125

Civil Penalties

(1) An agency that violates in-home care laws or rules, an administrative order, or settlement agreement is subject to the imposition of a civil penalty not to exceed \$1,000 per violation and may not total more than \$2,000.

(2) An individual who operates an in-home care agency without a license is subject to the imposition of a civil penalty not to exceed \$500 a day per violation.

(3) In determining the amount of a civil penalty, the Division shall consider whether:

(a) The Division made repeated attempts to obtain compliance;

(b) The licensee has a history of non-compliance with in-home care licensing laws and rules;

(c) The violation poses a serious risk to the public's health; and

(d) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(4) The Division shall document its consideration of the factors in section (2) of this rule.

(5) Each day a violation continues is an additional violation.

(6) A civil penalty imposed under this rule shall comply with ORS 183.746.

(7) Failure to comply with ORS 443.305 through 443.355 includes but is not limited to:

(a) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;

(b) Failure to provide the contracted in-home care services; or

(c) Failure to correct deficiencies identified during a Division inspection or complaint investigation.

Stat. Auth.: ORS 431.262 and 443.340

Stats. Implemented: ORS 443.315, 443.325, 443.327 & 443.340

Hist.: PH 10-2012, f. 6-26-12, cert. ef. 7-1-12

Rule Caption: Drug Shortages and Use of Expired Medications for Ambulance Services.

Adm. Order No.: PH 11-2012(Temp)

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 7-1-12 thru 12-27-12

Notice Publication Date:

Rules Adopted: 333-250-0051

Subject: The Oregon Health Authority, Public Health Division is temporarily adopting OAR 333-250-0051 relating to drug shortages and the use of expired pharmacological and medical supplies in ambulance services. The U.S. Food and Drug Administration has reported that drug shortages have been increasing in frequency and severity in recent years and the number of reported prescription drug shortages in the United States nearly tripled between 2005 and 2010, going from 61 to 178. Shortages can occur for many reasons, including manufacturing and quality problems, delays, and discontinuations of products. Emergency medical services (EMS) providers in Oregon may periodically be unable to obtain necessary and sometimes life-saving pharmacological and medical supplies due to national or regional shortages. Currently, ambulance services are prohibited from carrying expired pharmacological and medical supplies. The intent of this temporary rule is to provide that an ambulance service will not be subject to discipline for retaining expired pharmacological or medical supplies when certain standards are met. By adopting this temporary rule an ambulance service may carry expired pharmacological and medical supplies and use them, at the direction of a med-

ical director, if not providing the drug would adversely affect patient care or if necessary to potentially save a patient's life.

The Public Health Division, Emergency Medical Services and Trauma Systems (EMS/TS) program certifies and regulates emergency medical care providers and emergency medical services agencies throughout Oregon; collects data related to EMS and trauma care; and ensures the quality of trauma facilities; and provides guidance and training to emergency health services workers.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-250-0051

Drug Shortages and Use of Expired Pharmacological or Medical Supplies

(1) An ambulance service will not be subject to discipline for retaining expired pharmacological or medical supplies in violation of OAR 333-250-0049(2)(c) if an ambulance service documents the following:

(a) Contact information, including the date of contact, for three sources from which the ambulance service or its designee attempted to obtain the pharmacological or medical supplies, including but not limited to distributors, other health care providers, compounding pharmacies, or any other reseller that could reasonably be expected to be able to sell agents to the ambulance service;

(b) A written finding by the medical director that a substitution for the pharmacological or medical supply that is expired is unavailable or would pose a greater risk to a patient than use of an expired medication; and

(c) A copy of the directive or training provided to Emergency Medical Services Providers (EMS Providers) about the circumstances under which they are authorized to use an expired pharmacological or medical supply.

(2) The individual responsible for administering the agency's emergency medical services program must sign a statement attesting to the following: "I attest that I have made a good-faith effort to obtain [name of the pharmacological or medical supply] from the sources described herein for use by [Ambulance Provider], but was unable to obtain it. I have issued instructions or training described herein to EMS Providers on using expired pharmacological and medical supplies".

(3) The documentation required in this rule must be maintained in the records of the ambulance service and made available to Oregon Health Authority upon request.

(4) An EMS Provider may only use an expired pharmacological or medical supply if approved by the EMS Provider's medical director.

Stat. Auth.: ORS 682.017 & 682.068

Stats. Implemented: ORS 682.068

Hist.: PH 11-2012(Temp), f. 6-26-12, cert. ef. 7-1-12 thru 12-27-12

Oregon Health Licensing Agency Chapter 331

Rule Caption: Amend practice standards for body art professions and facilities. Create specialty body piercing certification.

Adm. Order No.: HLA 10-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 5-1-2012

Rules Adopted: 331-900-0097, 331-900-0098, 331-900-0099, 331-900-0115, 331-900-0120, 331-900-0125, 331-900-0130, 331-905-0000, 331-905-0005, 331-905-0010, 331-905-0011, 331-905-0012, 331-905-0013, 331-905-0014, 331-905-0015, 331-905-0020, 331-905-0025, 331-905-0030, 331-905-0035, 331-905-0040, 331-905-0045, 331-905-0050, 331-905-0052, 331-905-0055, 331-905-0058, 331-905-0060, 331-905-0070, 331-905-0075, 331-905-0080, 331-905-0085, 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-0110, 331-905-0115, 331-905-0120, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085, 331-915-0070, 331-915-0075, 331-915-0080, 331-915-0085, 331-925-0050, 331-925-0055

Rules Amended: 331-900-0000, 331-900-0005, 331-900-0010, 331-900-0015, 331-900-0020, 331-900-0025, 331-900-0030, 331-900-0035, 331-900-0040, 331-900-0045, 331-900-0070, 331-900-0085, 331-900-0090, 331-900-0095, 331-900-0100, 331-900-0110, 331-910-0000, 331-910-0010, 331-910-0015, 331-910-0020, 331-910-0025, 331-910-0040, 331-910-0045, 331-910-0055, 331-910-0065, 331-915-0000, 331-915-0010, 331-915-0015, 331-915-0020, 331-915-0025, 331-915-0040, 331-915-0045, 331-915-0065, 331-925-

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0000, 331-925-0005, 331-925-0010, 331-925-0015, 331-925-0020, 331-925-0025, 331-925-0030, 331-925-0035, 331-925-0040, 331-925-0045, 331-950-0010, 331-950-0020, 331-950-0030, 331-950-0040, 331-950-0050, 331-950-0060, 331-950-0070

Rules Repealed: 331-900-0000(T), 331-900-0005(T), 331-900-0010(T), 331-900-0015(T), 331-900-0020(T), 331-900-0030(T), 331-900-0040(T), 331-900-0070(T), 331-900-0085(T), 331-900-0090(T), 331-900-0095(T), 331-900-0100(T), 331-905-0000(T), 331-905-0003(T), 331-905-0005(T), 331-905-0010(T), 331-905-0012(T), 331-905-0014(T), 331-905-0015(T), 331-905-0020(T), 331-905-0025(T), 331-905-0030(T), 331-905-0032(T), 331-905-0034(T), 331-905-0035(T), 331-905-0040(T), 331-905-0045(T), 331-905-0050(T), 331-905-0053(T), 331-905-0055(T), 331-905-0060(T), 331-905-0065(T), 331-910-0070(T), 331-910-0075(T), 331-910-0080(T), 331-910-0085(T), 331-910-0010(T), 331-910-0015(T), 331-910-0020(T), 331-910-0025(T), 331-910-0040(T), 331-910-0045(T), 331-910-0055(T), 331-910-0065(T), 331-915-0010(T), 331-915-0015(T), 331-915-0020(T), 331-915-0025(T), 331-915-0027(T), 331-915-0029(T), 331-915-0040(T), 331-915-0045(T), 331-925-0000(T), 331-925-0005(T), 331-925-0010(T), 331-925-0015(T), 331-925-0020(T), 331-925-0025(T), 331-925-0030(T), 331-925-0035(T), 331-925-0040(T), 331-925-0050(T), 331-925-0055(T), 331-930-0000(T), 331-930-0005(T), 331-930-0010(T), 331-930-0015(T), 331-930-0020(T), 331-930-0025(T), 331-930-0030(T), 331-930-0000, 331-930-0005, 331-930-0010, 331-930-0015, 331-930-0020, 331-930-0025, 331-930-0030

Subject: Amend temporary earlobe piercing, body piercing, electrology and tattoo licensing requirements including delineating which standards must be adhered to for each field of practice. Separate standards into each individual field of practice including hand washing, sterilization and client records standards.

Require all body piercing supervisors obtain five hours of continuing education every two years related to teaching methods and instruction.

Allow a body piercer, tattoo artist or electrologist licensed in another state were the licensing requirements are not substantially equivalent to

Oregon's licensing requirements to prove to the satisfaction of the agency two years of full time work or employment in the last three years.

Require electrologists who wish to perform electrology on clients with a implantable devices obtain written authorization from physician which states electrology services are permitted.

Move cheek piercing into standard body piercing training or curriculum which requires two procedures be performed within the practical portion of the training or education.

Adopt specialty level one and two genital piercing education and training with specific theory, practical application as well as certain number of procedures be performed during the training or education.

Adopt supervisors qualifications for training specialty level one genital or specialty level two genital piercing trainees. Qualifications include years of experience, written and practical examination professional references.

Require that each licensee provide a uniform document which provides procedures, risks and alternatives related to specialty level one genital or specialty level two genital piercings. The informed consent document would also include disclosure of the number of specific piercings being performed on the client. The client is required to sign that they have been informed and agree to the procedure.

Amend facility application requirements to reflect the holder of a facility being a natural person, rather than a corporation and align appropriate fees. Adopt standards that must be followed by the holder of the facility license and standards for operating a facility within a residence.

Repeal division 30 regarding standards of practice and place under respective fields of practice.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-900-0000

Body Piercing Definitions

The following definitions apply to OAR chapter 331, division 900:

(1) "Affidavit of Licensure" has the meaning set forth in OAR 331-030-0040.

(2) "Agency" means the Oregon Health Licensing Agency.

(3) "APP" means Association of Professional Piercers.

(4) "Body piercing" has the definition set forth in ORS 690.350.

(5) "Direct supervision" means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(6) "Earlobe piercing services" means services limited to the soft lower part of the external ear only, not to include cartilage.

(7) "EPA" means United States Environmental Protection Agency.

(8) "FDA" means Food and Drug Administration.

(9) "Field of practice" has the definition set forth in ORS 690.350.

(10) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(11) "Instruments" means equipment used during body piercing services. Types of instruments include but are not limited to needles, forceps, hemostats, tweezers, and jewelry.

(12) "Official transcript" means:

(a) An original document authorized by the appropriate office in the Oregon Department of Education and certified by a career school licensed under ORS chapter 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Original documents must be submitted directly to the Agency from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope; or

(b) A document authorized by the appropriate office in the Oregon Department of Education and certified by career school licensed under ORS chapter 345 providing applicant identity information, field(s) of practice studied and completed, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Non-original documents shall only be accepted when and in the manner approved by the Agency

(13) "Practitioner" means a person licensed to perform services included within a field of practice.

(14) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be labeled with the "Biohazard" symbol.

(15) "Single point piercing", also referred to as an anchor or microdermal, means a single point perforation of any body part for the purpose of inserting an anchor with a step either protruding or flush with the skin;

(16) "Standard body piercing" includes all body piercings with the exception of specialty level one genital piercings and specialty level two genital piercings defined under 331-905-0000. Standard body piercing services do not include testes, deep shaft (corpus cavernosa), uvula, eyelids, or sub-clavicle piercings.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690.405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0005

Standard Body Piercing Education or Training

All education curriculum or training for standard body piercing must meet requirements set forth by the Oregon Health Licensing Agency prior to beginning education or training. The theory portion of the curriculum or training must be completed prior to the practical portion of the curriculum or training.

(1) Standard body piercing career school course of study must include 1150 hours of theory and practical education. The education must include a minimum of 250 hours of theory instruction, 900 hours of practical experience and a minimum of 400 practical operations.

(2) The 400 practical operations required under (1) of this rule must include:

(a) 100 practical operations observed by the student;

(b) 100 practical operations in which the student participated; and

(c) 200 practical operations performed by the student under direct supervision, but without assistance.

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(3) The 250 hours of theory instruction required in (1) of this section must include the following:

- (a) Anatomy, Physiology & Histology: 70 hours;
- (b) Infection control: 50 hours;
- (c) Jewelry: 15 hours;
- (d) Equipment: 20 hours;
- (e) Environment: 15 hours;
- (f) Ethics and legalities: 15 hours;
- (g) Emergencies: 5 hours;
- (h) Client consultation: 30 hours.
- (i) Oregon laws and rules: 20 hours; and
- (j) Discretionary related to body piercing: 10 hours

(4) The 900 hours of practical experience required in (1) of this rule must include client consultation, cleaning, disinfection and sterilization.

(5) The 400 practical operations must include the content listed in section (4) of this rule and the standard body piercing procedures listed in subsections (a) through (r) below:

- (a) Ear lobe: minimum of 10;
- (b) Helix: minimum of 10;
- (c) Conch: minimum of 10;
- (d) Industrial: minimum of 10;
- (e) Rook: minimum of 10;
- (f) Tragus: minimum of 10;
- (g) Tongue: minimum of 10;
- (h) Navel: minimum of 10;
- (I) Male nipple: minimum of 10;
- (j) Female nipple: minimum of 10;
- (k) Eyebrow: minimum of 10;
- (l) Upper Lip: minimum of 10;
- (m) Lower Lip: minimum of 10;
- (n) Septum: minimum of 10;
- (o) Nostril: minimum of 10;
- (p) Single point: minimum of 15;
- (q) Cheek: minimum of 2;
- (r) Additional standard body piercings of choice: minimum of 35 procedures.

(6) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed.

(7) Education must be conducted by a Department of Education, Private Career School licensed instructor who holds an active standard body piercing license.

(8) A Department of Education, Private Career School licensed instructor must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while working on the general public.

(9) Supervised training requirements for standard body piercing trainees: Standard body piercing training program must include 1150 hours of theory and practical education. The training must include a minimum of 250 hours of theory instruction, 900 hours of practical experience and a minimum of 400 practical operations.

(10) The 400 practical operations required under (9) of this rule must include:

- (a) 100 practical operations observed by the student;
- (b) 100 practical operations in which the student participated; and
- (c) 200 practical operations performed by the student under supervision, but without assistance.

(11) The 250 hours of theory instruction required in (9) of this section must include the following:

- (a) Anatomy, Physiology & Histology: 70 hours;
- (b) Infection control: 50 hours;
- (c) Jewelry: 15 hours;
- (d) Equipment: 20 hours;
- (e) Environment: 15 hours;
- (f) Ethics and legalities: 15 hours;
- (g) Emergencies: 5 hours;
- (h) Client consultation: 30 hours.
- (i) Oregon laws and rules: 20 hours; and
- (j) Discretionary related to body piercing: 10 hours

(12) The 900 hours of practical experience required in (9) of this rule must include client consultation, cleaning, disinfection and sterilization.

(13) The 400 practical operations must include the content listed in section (12) of this rule and the standard body piercing procedures listed in subsections (a) through (q) (r) below:

- (a) Ear lobe: minimum of 10;
- (b) Helix: minimum of 10;

- (c) Conch: minimum of 10;
- (d) Industrial: minimum of 10;
- (e) Rook: minimum of 10;
- (f) Tragus: minimum of 10;
- (g) Tongue: minimum of 10;
- (h) Navel: minimum of 10;
- (I) Male nipple: minimum of 10;
- (j) Female nipple: minimum of 10;
- (k) Eyebrow: minimum of 10;
- (l) Upper Lip: minimum of 10;
- (m) Lower Lip: minimum of 10;
- (n) Septum: minimum of 10;
- (o) Nostril: minimum of 10;
- (p) Single point: minimum of 15;
- (q) Cheek: minimum of 2;
- (r) Additional standard body piercings of choice: minimum of 35 procedures.

(14) As part of the approved training, all hours of theory must be completed prior to practical work being performed.

(15) Training must be completed in no less than nine months from the date the Agency issues standard body piercing trainee license.

(16) A supervisor must provide direct supervision of practical training on a one-to-one trainee to trainer ratio when the trainee is working on the general public.

(17) Supervisors of a standard body piercing trainee must adhere to OAR 331-900-0050

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0010

Earlobe Piercing Temporary License

(1) An earlobe piercing temporary license is valid for one year, and may be renewed one time.

(2) An earlobe piercing temporary license may be issued to an individual for a total of two years, no additional applications or renewals will be accepted by the Agency.

(3) An earlobe piercing temporary license holder must adhere to all standards within OAR 331-900-0095, 331-900-0097, 331-900-0098, 331-900-0099 and all applicable rules listed in OAR 331 Division 925.

(4) An earlobe piercing temporary license holder, licensed under ORS 690.365, may provide earlobe piercing services only.

(5) Upon renewal, individuals who held a technician registration for ear piercing prior to January 1, 2012, must apply for and meet the application requirements for an earlobe piercing temporary license or apply for and meet the application requirements for a standard body piercing license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0015

Application Requirements for Earlobe Piercing Temporary License

An individual applying for a Earlobe Piercing Temporary License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(3) Submit proof of being 18 years of age. Documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of having a high school diploma or equivalent;

(5) Submit proof of current blood borne pathogens training from an Agency approved provider;

(6) Submit proof of current basic first aid training from an Agency approved provider;

(7) Pay examination fees;

(8) Submit passing score of Agency approved written examinations in accordance with OAR 331-900-0060(1)(a) and (b) within two years from the date of application;

(9) Upon passage of all required examinations and before issuance of a license, the applicant must pay all license fees.

ADMINISTRATIVE RULES

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0020

Standard Body Piercing Trainee License

(1) A standard body piercing trainee license is valid for one year, and may be renewed one time.

(2) A standard body piercing trainee license holder, licensed under ORS 690.365, may provide standard piercing services under the direct supervision of an Agency approved supervisor pursuant OAR 331-900-0050 and 331-900-0055.

(3) Supervisors of a standard body piercing trainee must adhere to OAR 331-900-0055.

(4) A standard body piercing trainee license holder is prohibited from performing specialty level one genital piercing services defined under OAR 331-905-0000 and specialty level two genital piercing services defined under OAR 331-905-0000.

(5) A standard body piercing trainee license holder is prohibited from piercing the testes, deep shaft (corpus cavernosa), uvula, eyelids or sub-clavicle.

(6) A standard body piercing trainee license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110, 331-900-0115, 331-900-0120, 331-900-0125, 331-900-0130, and all applicable rules listed in OAR 331 Division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0025

Application Requirements for Standard Body Piercing Trainee License

An individual applying for a Standard Body Piercing Trainee License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(3) Submit proof of being 18 years of age, documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of having a high school diploma or equivalent; and

(5) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(6) Submit proof of current blood borne pathogens training from an Agency approved provider; and

(7) Pay applicable licensing fees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0030

Standard Body Piercing License

(1) A standard body piercing license holder, licensed under ORS 690.365, may perform standard body piercing services.

(2) A standard body piercing license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

(3) A standard body piercing license holder is prohibited from performing specialty level one genital piercing services defined under OAR 331-905-0000 until requirements of OAR 331-905-0040 are met and specialty level two genital piercing services defined under OAR 331-905-0000 until requirements of OAR 331-905-0050 are met.

(4) A body piercing technician licensed prior to January 1, 2012, is prohibited from performing specialty level one genital piercing services defined under OAR 331-905-0000 until requirements of OAR 331-905-0020 are met or specialty level genital piercing two services defined under OAR 331-905-0000 until requirements of OAR 331-905-0030 are met.

(5) A standard body piercing license holder is prohibited from piercing the testes, deep shaft (corpus cavernosa), uvula, eyelids or sub-clavicle.

(6) A standard body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110, 331-900-0115, 331-900-0120, 331-900-0125, 331-900-0130, and all applicable rules listed in OAR 331 Division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0035

Application Requirements for Standard Body Piercing License

(1) An individual applying for licensure to practice standard body piercing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000.

(f) Submit proof of having a high school diploma or equivalent;

(g) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1- A graduate from an Oregon Licensed Career School for Standard Body Piercing must:

(a) Submit official transcript from a body piercing career school under ORS 345 and showing proof of completion of required standard body piercing curriculum as approved by the Agency under OAR 331-900-0005;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination in accordance with OAR 331-900-0060(1)(c) within two years before the date of application;

(d) Submit a passing score of an Agency approved practical examination in accordance with OAR 331-900-0060(1)(d) within two years before the date of application; and

(e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(f) An applicant is not required to provide proof of official transcripts from a body piercing career school under ORS 345 if the applicant was previously licensed as a body piercer in Oregon.

(3) License Pathway 2 — An individual qualifying for licensure as a Standard Body Piercing Trainee must:

(a) Submit documentation approved by the Agency showing proof of having completed training listed under OAR 331-900-0005, verified by a supervisor approved under to OAR 331-900-0055, on a form prescribed by the Agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination for standard body piercing in accordance with OAR 331-900-0060(1)(c) within two years before the date of application;

(d) Submit a passing score of an agency approved practical examination in accordance with OAR 331-900-0060(1)(d) within two years before the date of application; and

(e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(4) License Pathway 3 — An individual qualifying for licensure through Reciprocity must:

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of current licensure as a body piercer, which is active with no current or pending disciplinary action. The licensing must be substantially equivalent to Oregon licensing requirements pursuant to ORS 690.365. Or if not substantially equivalent the applicant must demonstrate to the satisfaction of the Agency that the applicant has been employed or working as a body piercer full time for three of the last five years.

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination in accordance with OAR 331-900-0060(1)(c) within two years before the date of application;

(d) Submit a passing score of an Agency approved practical examination in accordance with OAR 331-900-0060(1)(d) within two years before the date of application; and

ADMINISTRATIVE RULES

(e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0040

Temporary Standard Body Piercing License

(1) A temporary standard body piercing license pursuant to ORS 690.365 is a temporary license to perform standard body piercing services on a limited basis, not to exceed 15 consecutive calendar days. A temporary standard body piercing license holder:

(a) May renew up to four times, in a 12 month period from the date the Agency receives the initial application. Renewals can be made consecutively with no lapse in active license dates;

(b) Must submit all requests to renew on a form prescribed by the Agency. Request to renew must be received at least 15 days before standard body piercing services are provided unless otherwise approved by the Agency;

(c) Must submit notification of a change in work location on a form prescribed by the Agency at least 24 hours before services are performed; and

(d) Must work in a licensed facility.

(2) A temporary standard body piercing license holder may only perform standard body piercing services.

(3) A temporary standard body piercing license holder is prohibited from performing specialty level one genital piercing services defined under OAR 331-905-0000 and specialty level two genital piercing services defined under OAR 331-905-0000.

(4) A temporary standard body piercing license holder is prohibited from piercing the testes, deep shaft (corpus cavernosa), uvula, eyelids or sub-clavicle.

(5) A temporary standard body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110, 331-900-0115, 331-900-0120, 331-900-0125, 331-900-0130, and all applicable rules listed in OAR 331 Division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0045

Application Requirements for Temporary Standard Body Piercing License

An individual applying for a Temporary Standard Body Piercing License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees and must be received at least 15 days before standard body piercing services are provided to clients;.

(3) Submit proof of being 18 years of age. Documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of current blood borne pathogens training from an Agency approved provider;

(5) Attest to six months of training or experience, within the last two years, performing standard body piercing services on a form prescribed by the Agency; or

(6) Submit affidavit of licensure pursuant to OAR 331-030-0040.

(7) For the purpose of this rule training or experience includes attendance or participation at an instructional program presented, recognized, or under the sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the Agency.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0070

Written Examination Retake Requirements

(1) Notwithstanding OAR 331-900-0060(1)(a) and (b) failed sections of the written examination may be retaken as follows:

(a) After first failed attempt — applicant may not retake for seven calendar days;

(b) After second failed attempt — applicant may not retake for seven calendar days;

(c) After third failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit one of the following:

(A) An official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-900-0005 from a career school licensed under 345 on a form prescribed by the agency; or

(B) Documentation from an Agency approved supervisor certifying completion of an additional 100 hours of training in theory, focused on the approved curriculum outlined in OAR 331-900-0005 on a form prescribed by the Agency.

(d) After fourth failed attempt — applicant may not retake for seven calendar days;

(e) After fifth failed attempt — applicant may not retake for seven calendar days;

(f) After sixth failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit one of the following:

(A) An official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-900-0005 from a career school licensed under 345 on a form prescribed by the Agency; or

(B) Documentation from an Agency approved supervisor certifying completion of an additional 100 hours of training in theory, focused on the approved curriculum outlined in OAR 331-900-0005 on a form prescribed by the Agency.

(g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Agency on a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0085

Continuing Education for Standard Body Piercing License

A standard body piercing license holder must comply with the following continuing education requirements:

(1) Complete 10 clock hours of satisfactory continuing education every year.

(2) Satisfactory continuing education courses must fit into the approved course of study outlined in OAR 331-900-0005, and must be obtained as follows:

(a) Five hours must involve participation or attendance at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, or completion and certification by an approved national home study organization; and

(b) Five hours may be self-study which may include the following:

(A) Correspondence courses including online courses;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides;

(4) A licensee must report compliance with the continuing education requirement through attestation on the license renewal document. Licensees will be subject to the provisions of OAR 331-900-0090 pertaining to periodic audit of continuing education.

(5) Hours of continuing education, in excess of the requirement for renewal will not be carried forward.

(6) Continuing education requirements must be met every year, even if the license is inactive or suspended.

(7) A licensee must maintain proof of continuing education for five years following the date of the continuing education hours obtained, for auditing purposes.

(8) A licensee may carry up to 8 continuing education hours forward to the next renewal cycle.

ADMINISTRATIVE RULES

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0090

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Agency will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-900-0085.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance and duration in hours;
- (e) Course agenda;
- (f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) Documentation substantiating the completion of continuing education through self-study must show a direct relation to subjects outlined in OAR 331-900-0005, be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN issued.

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time constitutes grounds for disciplinary action.

(6) Misrepresentation of continuing education or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0095

Earlobe Piercing Practice Standards and Prohibitions

(1) A temporary earlobe piercing license holder must:

(a) Use an earlobe piercing system that pierces an individual's earlobe by use of a sterile, encapsulated single-use stud with clasp.

(b) Use an earlobe piercing system made of non absorbent or non porous material which can be cleaned and disinfected according to manufacturer's instructions.

(c) Use single-use prepackaged sterilized ear piercing studs for each client.

(d) Store new or sterilized ear piercing systems separately from used or soiled instruments.

(e) Disinfect all parts of the piercing gun with a high-level disinfectant

(2) A temporary earlobe piercer may only pierce with an earlobe piercing system; use of a needle is prohibited.

(3) Earlobe piercing system may only be used to pierce the earlobe. Use of an earlobe piercing system on other parts of the body or ear is prohibited.

(4) Piercing with a manual loaded spring operated ear piercing system is prohibited.

(5) Piercing the earlobe with any type of piercing gun which does not use the pre-sterilized encapsulated stud and clasp system is prohibited.

(6) Earlobe Piercing is prohibited:

(a) On a person under 18 years of age unless the requirements of OAR 331-900-0099 are met.

(b) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(c) On a person who shows signs of recent intravenous drug use; and

(d) On a person with sunburn or other skin diseases or disorders of the skin such as open lesions, rashes, wounds, puncture marks in areas of treatment.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0097

General Standards for Temporary Earlobe Body Piercing

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) A temporary earlobe piercing licensee licensed to perform earlobe piercing services or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed.

(e) Ensure chemicals are stored in labeled, closed containers.

(f) Ensure that single-use disposable paper products and protective gloves are used for each client. Use of towels and linens are prohibited.

(g) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels.

(h) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client.

(i) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums.

(j) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(k) Ensure waste disposed of in receptacles located in non-service areas is limited to materials, which are not practice-related or used in the performance of any client services.

(l) Ensure all waste items that come in direct contact with the client's skin that cannot be cleaned and disinfected must be disposed of utilizing a "double bagging" technique: which means the waste must be completely enclosed inside a discarded glove or disposed of in a closed plastic bag that is separate from the garbage liners. The waste must be disposed of in a covered waste receptacle immediately after use.

(m) Ensure disposable sharp objects that come in contact with blood and/or body fluids must be disposed of in a sharps container.

(n) Adhere to all Centers for Disease Control and Prevention, Standard Precautions.

(3) A temporary earlobe piercing licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) A temporary earlobe piercing licensee is permitted to have hot and cold running water within a restroom as part of surrounding premises or adjacent to the facility.

(6) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

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331-900-0098

Standards for Client Services for Temporary Earlobe Piercing Licensees

(1) A temporary earlobe piercing licensee must observe and adhere to the following hand washing and disposable glove standards when servicing clients:

(a) **HAND WASHING:** Hands must be washed or treated with an antibacterial hand sanitizer before and after treatment of each client, and before putting on disposable gloves and immediately after disposable gloves are removed;

(b) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists. Use of bar soap is prohibited.

(2) A temporary earlobe piercing licensee must observe and adhere to the following protective disposable glove standards when servicing clients:

(a) **PROTECTIVE DISPOSABLE GLOVES:** A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with hand washing instructions listed in Subsection (1) of this rule before putting on disposable gloves and immediately after disposable gloves are removed;

(c) When a treatment session is interrupted disposable gloves must be removed and discarded. Hand washing instructions listed in Subsection (1) of this rule must be followed and a new pair of gloves put on when returning to the earlobe piercing service area.

(d) When a licensee leaves the earlobe piercing procedure area in the middle of a earlobe piercing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (1) of this rule must be followed and a new pair of gloves put on when returning to the procedure area.

(e) Disposable gloves must be removed and discarded before leaving the area where earlobe piercing services are performed.

(f) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (1) of this rule must be followed and gloves changed following hand washing.

(g) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (1) of this rule.

(10) Disposable gloves must be worn during pre-cleaning, cleaning, rinsing, disinfecting and drying of equipment and instruments;

(11) A client's skin must be thoroughly cleaned with an antiseptic solution.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0099

Client Records and Information for Temporary Earlobe Piercing Licensees

(1) A temporary earlobe piercing licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

(a) Name, address, telephone number and date of birth of client;

(b) Date of each service;

(c) Name and license number of the licensee providing service;

(d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing.

(e) Complete list of the client's sensitivities to medicines or topical solutions;

(f) History of the client's bleeding disorders;

(g) Description of complications during procedure(s);

(h) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the body piercing service including possible reactions, side effects and potential complications of the service and consent to obtaining the body piercing service; and

(B) Information listed in OAR 331-900-0110 regarding informed consent for certain standard body piercing procedures.

(C) After care instructions including care following service, possible side effects and complications and restrictions.

(i) Signature from the client that they have been informed, both verbally and in writing, of all information related to the earlobe piercing services including possible reactions, side effects and potential complications of the service and consent to obtaining the earlobe piercing service; and

(j) The licensee must obtain proof of age or consent consisting of one of the following:

(A) If the client is of over 18, a copy of a government issued photographic identification. A copy of the government issued photographic identification must be included in the client record;

(B) If the client is a minor written parental or legal guardian consent is required. The written parental or legal guardian consent must be submitted to the licensee by the parent or legal guardian prior to piercing the minor. The consenting parent or legal guardian must be 18 years of age and present government issued photographic identification at time of written consent. A copy of the government issued photographic identification must be included in the client record.

(C) If the client is an emancipated minor, copies of legal court documents proving emancipation and government issued photographic identification is required.

(2) A licensee may obtain advice from physicians regarding medical information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be kept at facility premises for a minimum of three years and must be made immediately available to the agency upon request.

(4) Client records must be typed or printed in a legible format. Client records, which are not readable by the Agency, will be treated as incomplete.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0100

Standard Body Piercing Practice Standards and Prohibitions

(1) Piercing is prohibited:

(a) On a person under 18 years of age unless the requirements of OAR 331-900-0130 are met.

(b) On the genital or nipple of a person under the age of 18 regardless of parental consent.

(c) On testes, deep shaft (corpus cavernosa), uvula, eyelids and sub-clavicle.;

(d) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(e) On a person who shows signs of recent intravenous drug use; and

(f) On a person with sunburn or other skin diseases or disorders of the skin such as open lesions, rashes, wounds, puncture marks in areas of treatment.

(2) Use of piercing guns is limited to piercing of the earlobe exclusively. No other part of the body or ear shall be pierced by use of a piercing gun.

(3) Piercing with a manual loaded spring operated piercing gun is prohibited.

(4) Piercing the earlobe with any type of piercing gun which does not use a pre-sterilized encapsulated stud and clasp system is prohibited.

(5) The Agency adopts the Association of Professional Piercers 2005 Procedure Manual by reference which must be used by licensees as a standard of care for body piercing best practices. The procedure manual can be located at <http://www.safepiercing.org/publications/procedure-manual/>

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0110

Informed Consent for Certain Standard Body Piercing Procedures

(1) A standard body piercer must provide information prescribed by the Agency to the client, regarding the following procedures:

(a) Nape piercing;

(b) Single point piercing; and

(c) General information regarding standard body piercing.

(2) Informed consent documents for standard body piercing procedures are published on the Agency's website at <http://www.oregon.gov/OHLA/BAP/forms.shtml>.

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Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0115

General Standards for Standard Body Piercing

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed.

(e) Ensure chemicals are stored in labeled, closed containers.

(f) Ensure that single-use disposable paper products, single-use needles, sterilized jewelry and protective gloves are used for each client. Use of towels and linens are prohibited.

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility but separate from a restroom.

(h) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels.

(i) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client.

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums.

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(l) Ensure waste disposed of in receptacles located in non-service areas is limited to materials, which are not practice-related or used in the performance of any client services.

(m) Ensure all waste items that come in direct contact with the client's skin that cannot be cleaned and sterilized must be disposed of utilizing a "double bagging" technique: which means the waste must be completely enclosed inside a discarded glove or disposed of in a closed plastic bag that is separate from the garbage liners. The waste must be disposed of in a covered waste receptacle immediately after use.

(n) Ensure disposable sharp objects that come in contact with blood and/or body fluids must be disposed of in a sharps container.

(o) Adhere to all Centers for Disease Control and Prevention, Standard Precautions.

(p) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(q) Ensure that all jewelry used for initial piercings is be sterilized before use on a client in accordance with OAR 331-900-0125.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances must be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0120

Standards for Client Services for Standard Body Piercing

(1) A licensee must wash hands in accordance with Subsection (2) of this rule:

(a) Prior to donning gloves to set-up of instruments used for conducting body piercing procedures;

(b) Immediately prior to donning gloves to perform a body piercing procedure;

(c) Immediately after removing gloves at the conclusion of performing a body piercing procedure and after removing gloves at the conclusion of procedures performed in the sterilization area;

(d) When leaving the work area;

(e) When coming in contact with blood or bodily fluids;

(f) Before and after performing the following acts not limited to eating, drinking, smoking, applying lip cosmetics or lip balm, handling contact lenses, or using the bathroom; or

(g) When hands are visibly soiled.

(2) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists.

(3) A new pair of disposable gloves must be worn during the treatment of each client;

(4) A minimum of one pair of disposable gloves must be used for each of the following stages of the body piercing procedure:

(a) Set-up of instruments used for conducting body piercing procedures and skin preparation of the body piercing procedure area;

(b) The body piercing procedure and post-procedure teardown; or

(c) Cleaning and disinfection of the procedure area after each use or between clients.

(5) Once gloves have been removed, they must be disposed of immediately and hand washing instructions listed in Subsection (2) of this rule must be followed.

(6) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (2) of this rule must be followed and gloves changed following hand washing.

(7) Disposable gloves must be removed before leaving the area where body piercing procedures are performed.

(8) When a licensee leaves the body piercing procedure area in the middle of a body piercing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (2) of this rule must be followed and a new pair of gloves put on when returning to the procedure area.

(9) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (2) of this rule.

(10) A client's skin must be thoroughly cleaned with an antiseptic solution.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-900-00125

Approved Sterilization Standards for Standard Body

(1) Needles must be single use, used on one client, then properly disposed of in a approved sharps container defined under OAR 331-900-0000.

(2) All non-sterilized instruments or reusable instruments that come in direct contact with a client's skin or are exposed to blood or bodily fluid must be cleaned and sterilized before use on a client or re-use on another client.

(3) New gloves must be worn during any cleaning or sterilization procedure.

(4) The cleaning and sterilization process listed in subsection (5) of this rule is not required if single-use prepackaged sterilized instruments, obtained from suppliers or manufacturers are used.

(5) Approved cleaning and sterilization process for non-sterilized instruments or reusable instruments includes the following ordered method after each use:

(a) Clean non-sterilized instruments or reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and bodily fluids;

(b) Clean non-sterilized instruments or reusable instruments must be rinsed and placed in an ultrasonic cleaner filled with an appropriate ultrasonic solution including but not limited to an enzymatic cleaner. The ultrasonic unit must be used according to the manufacturer's instructions. The ultrasonic unit must operate at 40 to 60 kilohertz. All hinged instruments

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(including but not limited to piercing forceps) must be in the open position. The ultrasonic cleaner must remain covered when in use;

(c) Remove non-sterilized instruments or reusable instruments from the ultrasonic unit. All instruments must be rinsed, air dried, and individually packaged in sterilization pouches that includes use of a chemical indicator strip to assure sufficient temperature during each sterilization cycle, the date the sterilization was performed must be applied to the sterilization pouch;

(d) Individually packaged non-sterilized instruments or reusable instruments must be sterilized by using an autoclave sterilizer, steam or chemical, registered and listed with the FDA;

(e) A steam sterilization integrator must be used to monitor the essential conditions of steam sterilization for each autoclaved load or cycle. Results must be recorded in a log book for each sterilization cycle. Each steam sterilization integrator must indicate the date the sterilization cycle took place. Steam sterilization integrators must be kept for a minimum of sixty days.

(f) After sterilization, the sterilized instruments must be stored in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments.

(6) Use of a biological monitoring system ("spore tests") must be done at least once a month, verified through an independent laboratory, to assure all microorganisms have been destroyed and sterilization achieved.

(7) The ultrasonic unit listed in subsection (5)(c) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the ultrasonic unit must be kept on file at the body art facility.

(8) All sterilization pouches with indicator strips listed in subsection (5)(d) of this rule must contain a chemical/temperature and/or humidity sensitive tapes, strips or pellets for monitoring each sterilization cycle.

(9) Sterilization pouches with indicator strips listed in subsection (5)(c) of this rule and steam sterilization integrators listed in (5)(e) of this rule must be available at all times for inspection by the Agency.

(10) Biological spore test results listed in subsection (6) of this rule must be immediately available at all times for inspection by the Agency and kept at facility premises for a minimum of two years.

(11) The autoclave listed in subsection (5)(e) must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the autoclave must be kept on file at the body art facility.

(12) The expiration date for sterilized instruments is one year from the date of sterilization unless the integrity of the package is compromised.

(13) Sterilized instruments may not be used if the package integrity has been breached, is wet or stained, or the expiration date has exceeded without first meeting the requirements listed in Subsection (5) of this rule.

(14) All sterilized instruments used in body piercing procedures must remain stored in sterile packages and in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments until just prior to the performance of a body piercing procedure.

(15) If a biological spore test listed in subsection (6) of this rule, result is positive, a licensee must discontinue the use of that sterilizer (autoclave) until it has been serviced and a negative spore test has been recorded before putting that sterilizer back into service. Until a negative spore test has been received, the licensee must:

(a) Use an alternative sterilizer (autoclave);

(b) Use only sterilized instruments that have a sterilization date on or before the date before the last negative spore test was recorded; or

(c) Use only single use instruments.

(16) Following a negative spore test instruments which were sterilized following the receipt of the negative spore test must be repackaged and sterilized pursuant to subsection (5) of this rule, before use.

(17) Following a negative spore test the licensee or facility must contact all clients in writing who may have received services prior to receiving the negative spore test results.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-900-0130

Client Records and Information for Standard Body Piercing

(1) A licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

(a) Name, address, telephone number and date of birth of client;

(b) Date of each service, procedure location on the body and type of service performed on client;

(c) Name and license number of the licensee providing service;

(d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing.

(e) Complete list of the client's sensitivities to medicines or topical solutions;

(f) History of the client's bleeding disorders;

(g) Type of jewelry;

(h) Description of complications during procedure(s);

(i) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the body piercing service including possible reactions, side effects and potential complications of the service and consent to obtaining the body piercing service; and

(B) Information listed in OAR 331-900-0110 regarding informed consent for certain standard body piercing procedures.

(C) After care instructions including care following service, possible side effects and complications and restrictions.

(j) The licensee must obtain proof of age or consent consisting of one of the following:

(A) If the client is of over 18, a copy of a government issued photographic identification. A copy of the government issued photographic identification must be included in the client record;

(B) If the client is a minor written parental or legal guardian consent is required. The written parental or legal guardian consent must be submitted to the licensee by the parent or legal guardian prior to piercing the minor. The consenting parent or legal guardian must be 18 years of age and present government issued photographic identification at time of written consent. A copy of the government issued photographic identification must be included in the client record.

(C) If the client is an emancipated minor, copies of legal court documents proving emancipation and government issued photographic identification is required.

(2) A licensee may obtain advice from physicians regarding medical Information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be maintained at facility premises for a minimum of three years and must be made immediately available to the agency upon request.

(4) Client records must be typed or printed in a legible format. Client records, which are not readable by the Agency, will be treated as incomplete.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0000

Specialty Body Piercing Definitions

The following definitions apply to OAR chapter 331, division 900:

(1) "Affidavit of Licensure" has the meaning set forth in OAR 331-030-0040.

(2) "Agency" means the Oregon Health Licensing Agency.

(3) "APP" means Association of Professional Piercers.

(4) "Body piercing" has the definition set forth in ORS 690.350.

(5) "Direct supervision" means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(6) "EPA" means United States Environmental Protection Agency.

(7) "FDA" means Food and Drug Administration.

(8) "Field of practice" has the definition set forth in ORS 690.350.

(9) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(10) "Instruments" means equipment used during body piercing services. Types of instruments include but are not limited to needles, forceps, hemostats, tweezers, and jewelry.

(11) "Official transcript" means:

(a) An original document authorized by the appropriate office in the Oregon Department of Education and certified by a career school licensed under ORS chapter 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized

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representative on file with the Agency. Original documents must be submitted directly to the Agency from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope; or

(b) A document authorized by the appropriate office in the Oregon Department of Education and certified by career school licensed under ORS chapter 345 providing applicant identity information, field(s) of practice studied and completed, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Non-original documents shall only be accepted when and in the manner approved by the Agency.

(12) "Practitioner" means a person licensed to perform services included within a field of practice.

(13) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be labeled with the "Biohazard" symbol.

(14) "Specialty level one genital piercing" includes the following:

(a) Male genital piercings including the scrotum, frenum, foreskin, or the perineum behind the scrotum, and the piercing of the penis through the urethra, perineum behind the scrotum (Guiche) and exiting on the underside of the penis (called a "Prince Albert"); and

(b) Female genital piercing including the labia majora, labia minors, piercings of the clitoral hood, and perineum between the vagina and the anus (fourchette).

(15) "Specialty level two genital piercing" includes the following:

(a) Male genital piercings including: a vertical piercing through the glans of the penis (called an "apadravya"), horizontal piercing through the glans of the penis (called an "ampallang"), a piercing through the corona or ridge of the glans of the penis (called a "dydoe"), a piercing of the penis entering through the urethra and exiting on the upper side of the penis (called a "reverse Prince Albert"); and

(b) Female genital piercings including the clitoris, a piercing in which jewelry is inserted below the hood behind the clitoris (called a "triangle"), and a piercing of the vagina through the urethra and exiting on the upper side of the vagina (called a "Princess Albertina").

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0005

Specialty Level One Genital Piercing Education or Training

Beginning on January 1, 2013, all education curriculum or training for specialty level one genital piercing must meet requirements set forth by the Oregon Health Licensing Agency prior to beginning training or education. The theory portion of the curriculum or training must be completed prior to the practical portion of the curriculum or training.

(1) Education Requirements for Specialty Level One Genital Piercing Student: An individual must obtain a standard body piercing license prior to beginning education for specialty level one genital piercing. Specialty level one genital piercing career school course of study must include 46 hours of theory and practical education. The education must include a minimum of 10 hours of theory instruction, 36 hours of practical experience and a minimum of 36 practical operations.

(2) The 36 practical operations required must include:

(a) 6 practical operations observed by the student which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 6 practical operations the student must observe at least 4 different piercing procedures listed in subsection (5) of this rule.

(b) 10 practical operations in which the student participated which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 10 practical operations the student must participate in at least 4 different piercing procedures listed in subsection (5) of this rule; and

(c) 20 practical operations performed by the student under direct supervision, but without assistance which must include a minimum of 6 female genital piercings and a minimum of 6 male genital piercings. Out of the 20 practical operations the student must perform at least 4 different piercing procedures listed in subsection (5) of this rule.

(3) The 10 hours of theory instruction required must include:

(a) Male and female genital anatomy and physiology: 6 hours

(b) Ethics and legalities related to genital piercing: 1 hour;

(c) Client consultation related to genital piercing: 1 hour;

(d) Jewelry and equipment: 1.5 hour; and

(e) Oregon laws and rules: .5 hour.

(4) The 36 hours of required practical training must include client consultation, cleaning, disinfection and sterilization.

(5) The 36 piercings included in the practical training must include at least 3 different piercing procedures listed in Subsection (a) through (i) below and must include content listed in subsection (4) of this rule:

(a) Scrotum;

(b) Frenum;

(c) Foreskin;

(d) Perineum behind the scrotum (Guiche);

(e) Piercing of the penis through the urethra and exiting on the underside of the penis (Prince Albert);

(f) Labia majora;

(g) Labia minora;

(h) Piercing of the perineum between the vagina and the anus (fourchette);

(i) Piercing of the clitoral hood;

(6) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed.

(7) Education must be conducted by a Department of Education, Private Career School licensed instructor who holds an active specialty level one genital piercing license.

(8) A Department of Education, Private Career School licensed instructor must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while working on the general public.

(9) Supervised Training Requirements for Specialty Level One Genital Piercing Trainee: An individual must obtain a standard body piercing license prior to beginning training for specialty level one genital piercing. Specialty level one genital piercing training program must include 46 hours of theory and practical training. The training must include a minimum of 10 hours of theory instruction, 36 hours of practical training and a minimum of 36 practical operations.

(10) The 36 practical operations required must include:

(a) 6 practical operations observed by the trainee which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 6 practical operations the trainee must observe at least 4 different piercing procedures listed in subsection (13) of this rule.

(b) 10 practical operations in which the trainee participated which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 10 practical operations the trainee must participate in at least 4 different piercing procedures listed in subsection (13) of this rule; and

(c) 20 practical operations performed by the trainee under direct supervision, but without assistance which must include a minimum of 3 female genital piercings and a minimum of 3 male genital piercings. Out of the 20 practical operations the trainee must perform at least 3 different piercing procedures listed in subsection (13) of this rule.

(11) The 10 hours of theory instruction required must include:

(a) Male and female genital anatomy and physiology: 6 hours

(b) Ethics and legalities related to genital piercing: 1 hour;

(c) Client consultation related to genital piercing: 1 hour;

(d) Jewelry and equipment: 1.5 hour; and

(e) Oregon laws and rules: .5 hour.

(12) The 36 hours of required practical training must include client consultation, cleaning, disinfection and sterilization.

(13) The 36 piercings included in the practical training must include at least 3 different piercing procedures listed in Subsection (a) through (i) below and must include content listed in subsection (12) of this rule:

(a) Scrotum;

(b) Frenum;

(c) Foreskin;

(d) Perineum behind the scrotum (Guiche);

(e) Piercing of the penis through the urethra and exiting on the underside of the penis (Prince Albert);

(f) Labia majora;

(g) Labia minora;

(h) Piercing of the perineum between the vagina and the anus (fourchette);

(i) Piercing of the clitoral hood;

(14) As part of the approved training, all hours of theory must be completed prior to practical work being performed.

(15) Training must be completed in no less than two months from the date the Agency issues a specialty level one genital piercing trainee license.

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(16) A supervisor must provide direct supervision of practical training on a one-to-one trainee to trainer ratio for trainees performing practical training while the trainee is working on the general public.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345
Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0010

Specialty Level Two Genital Piercing Education or Training

Beginning on January 1, 2013, all education curriculum or training for specialty level two genital piercing must meet requirements set forth by the Oregon Health Licensing Agency prior to beginning training or education. The theory portion of the curriculum or training must be completed prior to the practical portion of the curriculum or training.

(1) Education Requirements for Specialty Level Two Genital Piercing Student: An individual must obtain a standard body and specialty level one genital piercing license prior to beginning education for specialty level two genital piercing. Specialty level two genital piercing career school course of study must include 31 hours of theory and practical education. The education must include a minimum of 5 hours of theory instruction, 26 hours of practical experience and a minimum of 26 practical operations.

(2) The 26 practical operations required must include:

(a) 6 practical operations observed by the student. Out of the 6 practical operations the student must observe at least 3 different piercing procedures listed in subsection (5) of this rule;

(b) 10 practical operations in which the student participated. Out of the 10 practical operations the student must participate in at least 3 different piercing procedures listed in subsection (5) of this rule; and

(c) 10 practical operations performed by the student under direct supervision, but without assistance. Out of the 10 practical operations the student must perform at least 3 different piercing procedures listed in subsection (5) of this rule.

(3) The 5 hours of theory instruction required must include:

(a) Male and female genital anatomy and physiology: 3.5 hours

(b) Client consultation related to genital piercing: .5 hours;

(c) Jewelry and equipment: .5 hours; and

(d) Oregon laws and rules: .5 hours.

(4) The 26 hours of practice required must include client consultation, cleaning, disinfection and sterilization.

(5) The 26 piercings included in the practical training must include at least 3 different piercing procedures listed in Subsection (a) through (g) below and must include content listed in subsection (4) of this rule:

(a) Piercing of the penis entering through the urethra and exiting on the upper side of the penis (reverse prince albert);

(b) Piercing through the corona or ridge of the glans of the penis (dydoe);

(c) Horizontal piercing through the glans of the penis (ampallang);

(d) Vertical piercing through the glans of the penis (apadravya);

(e) Clitoris;

(f) Piercing in which jewelry is inserted below the hood behind the clitoris (triangle);

(g) Any piercing of the female genitals through the urethra; and

(h) Any other genital piercings not listed in specialty level one genital piercing.

(6) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed.

(7) Education must be conducted by a Department of Education, Private Career School licensed instructor who holds an active specialty level two genital piercing license.

(8) A Department of Education, Private Career School licensed instructor must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while working on the general public.

(9) Supervised Training Requirements for Temporary Specialty Level Two Genital Piercing Licensee: An individual must obtain a standard body and specialty level one genital piercing license prior to beginning training for specialty level two genital piercing. Specialty level two genital piercing training program must include 31 hours of theory and practical training. The training must include a minimum of 5 hours of theory instruction, 26 hours of practical training and a minimum of 26 practical operations.

(10) The 26 practical operations required must include:

(a) 6 practical operations observed by the student Out of the 6 practical operations the student must observe at least 3 different piercing procedures listed in subsection (13) of this rule;

(b) 10 practical operations in which the student participated. Out of the 10 practical operations the student must participate in at least 3 different piercing procedures listed in subsection (13) of this rule; and

(c) 10 practical operations performed by the student under direct supervision, but without assistance. Out of the 10 practical operations the student must perform at least 3 different piercing procedures listed in subsection (13) of this rule.

(11) The 5 hours of theory instruction required must include:

(a) Male and female genital anatomy and physiology: 3.5 hours

(b) Client consultation related to genital piercing: .5 hours;

(c) Jewelry and equipment: .5 hours; and

(d) Oregon laws and rules: .5 hours.

(12) The 26 hours of practice required must include client consultation, cleaning, disinfection and sterilization.

(13) The 26 piercings included in the practical training must include at least three different piercing procedures listed in Subsection (a) through (g) below and must include content listed in subsection (12) of this rule:

(a) Piercing of the penis entering through the urethra and exiting on the upper side of the penis (reverse prince albert);

(b) Piercing through the corona or ridge of the glans of the penis (dydoe);

(c) Horizontal piercing through the glans of the penis (ampallang);

(d) Vertical piercing through the glans of the penis (apadravya);

(e) Clitoris;

(f) Piercing in which jewelry is inserted below the hood behind the clitoris (triangle);

(g) Any piercing of the female genitals through the urethra; and

(h) Any other genital piercings not listed in specialty level one genital piercing.

(14) As part of the approved training, all hours of theory must be completed prior to practical work being performed.

(15) Training must be completed in no less than 2 months from the date the Agency issues a specialty level two genital piercing temporary license.

(16) A supervisor must provide direct supervision of practical training on a one-to-one trainee to trainer ratio for trainees performing practical training while the trainee is working on the general public.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0011

Specialty Level One Genital Piercing Trainee

(1) A specialty level one genital piercing trainee license is valid for one year, and may not be renewed.

(2) A specialty level one genital piercing trainee license holder may perform services defined under OAR 331-905-0000(14).

(3) A specialty level one genital piercing trainee license holder, licensed under ORS 690.365, may provide specialty level one genital piercing services under the direct supervision of an Agency approved supervisor pursuant OAR 331-905-0052 and 331-905-0055.

(4) Supervisors of a specialty level one genital piercing trainee must adhere to OAR 331-905-0055.

(5) A specialty level one genital piercing license holder must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0012

Application Requirements for Specialty Level One Genital Piercing Trainee License

An individual applying for a Specialty Level One Genital Trainee License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(3) Submit proof of being 18 years of age, documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of having a high school diploma or equivalent;

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(5) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(6) Submit proof of current blood borne pathogens training from an Agency approved provider;

(7) Submit proof of having a current standard body piercing license which is active with no current or pending disciplinary action; and

(8) Pay applicable licensing fees.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415

Hist.: HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0013

Specialty Level Two Genital Piercing Trainee

(1) A specialty level two genital piercing trainee license is valid for one year, and may not be renewed.

(2) A specialty level two genital piercing trainee license holder may perform services defined under OAR 331-905-0000(15).

(3) A specialty level two genital piercing trainee license holder, licensed under ORS 690.365, may provide specialty level two genital piercing services under the direct supervision of an Agency approved supervisor pursuant OAR 331-905-0058 and 331-905-0060.

(4) Supervisors of a specialty level two genital piercing trainee must adhere to OAR 331-905-0060.

(5) A specialty level two genital piercing license holder must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0014

Application Requirements for Specialty Level Two Genital Piercing Trainee License

An individual applying for a Specialty Level Two Genital Trainee License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(3) Submit proof of being 18 years of age, documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of having a high school diploma or equivalent;

(5) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(6) Submit proof of current blood borne pathogens training from an Agency approved provider;

(7) Submit proof of having a current specialty level one genital piercing license which is active with no current or pending disciplinary action; and

(8) Pay applicable licensing fees.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415

Hist.: HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0015

Specialty Level One Genital Piercing License Issued to a Body Piercer Licensed Prior to January 1, 2012

(1) A specialty level one genital piercing license holder may perform services standard body piercing services defined under OAR 331-905-0000.

(2) A specialty level one genital piercing license holder may perform services defined under OAR 331-905-0000(14).

(3) A specialty level one genital piercing license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(4) A specialty level one genital piercing license holder must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0020

Application Requirements for Specialty Level One Genital Piercer Licensed as Body Piercer Prior to January 1, 2012

(1) An individual applying for licensure who obtained an Oregon body piercing license before January 1, 2012, to qualify for a specialty level one genital piercing license, that individual must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent;

(g) Submit proof of having a current standard body piercing license which is active with no current or pending disciplinary action;

(h) Submit copies of client records demonstrating proof of having successfully performed a minimum of 36 specialty level one genital piercings defined under OAR 331-905-0005(5). Client records must demonstrate proof of having performed at least 3 different piercing procedures listed in OAR 331-905-0005(5); and

(i) Pay all licensing fees.

(2) Experience claimed under subsections (1)(g) and (1)(h) of this rule is subject to independent verification by the Agency.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0025

Specialty Level Two Genital Piercing License Issued to a Body Piercer Licensed Prior to January 1, 2012

(1) A specialty level two genital piercing license holder may perform services defined under OAR 331-905-0000(15).

(2) A specialty level two genital piercing license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(3) A specialty level two genital piercing license holder must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0030

Application Requirements for Specialty Level Two Genital Piercer Licensed as a Body Piercer Prior to January 1, 2012

(1) An individual applying for licensure who obtained an Oregon body piercing license before January 1, 2012, to qualify for a specialty level two genital piercing license, that individual must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent;

(g) Submit proof of having a current specialty level one genital piercing license which is active with no current or pending disciplinary action;

(h) Submit copies of client records demonstrating proof of having successfully performed a minimum of 26 specialty level two genital pierc-

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ings defined under OAR 331-905-0010(5). Client records must demonstrate proof of having performed at least 3 different piercing procedures listed in OAR 331-905-0010(5); and

(i) Pay all licensing fees.

(2) Experience claimed under subsections (1)(g) and (1)(h) of this rule is subject to independent verification by the Agency.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0035

Specialty Level One Genital Piercing License

(1) A specialty level one genital piercing license pursuant ORS 676.615 may perform standard body piercing services defined under OAR 331-900-0000.

(2) A specialty level one genital piercing license may perform services defined under OAR 331-905-0000(14).

(3) A specialty level one genital piercing license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(4) A specialty level one genital license holder must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0040

Application Requirements for Specialty Level One Genital Piercing License

(1) An individual applying for licensure to practice specialty level one genital piercing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent;

(g) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Specialty Level One Genital Piercing:

(a) Submit official transcript from a specialty level one genital piercing career school under ORS 345 and showing proof of completion of required specialty level two genital piercing curriculum as approved by the Agency under OAR 331-905-0005(1) through (8);

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination under OAR 331-905-0070(1) and (3) within two years before the date of application;

(d) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(3) License Pathway 2 — Qualification through Specialty Level One Genital Piercing Temporary License:

(a) Submit documentation approved by the Agency showing proof of having completed required specialty level one genital training listed under OAR 331-905-0005(9) through (16), and verified by a supervisor approved under OAR 331-905-0055, on a form prescribed by the Agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination under OAR 331-905-0070(1) and (3) within two years before the date of application;

(d) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0045

Specialty Level Two Genital Piercing License

(1) A specialty level two genital piercing license may perform standard body piercings services defined under OAR 331-900-0000.

(2) A specialty level two genital piercing license may perform specialty level one genital piercing services defined under OAR 331-905-0000(14).

(3) A specialty level two genital piercing license may perform specialty level two genital piercing services defined under OAR 331-905-0000(15).

(4) A specialty level two genital piercing license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(5) A specialty level two genital license holder must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0050

Application Requirements for Specialty Level Two Genital Piercing License

(1) An individual applying for licensure to practice specialty level two genital piercing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent;

(g) Provide documentation of completing a qualifying pathway;

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Specialty Level Two Genital Piercing:

(a) Submit official transcript from a specialty level two genital piercing career school under ORS 345 and showing proof of completion of required specialty level two genital piercing curriculum as approved by the Agency under OAR 331-905-0010 (1) through (7);

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination under OAR 331-905-0070(2) and (3) within two years before the date of application;

(d) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(3) License Pathway 2 — Qualification through Specialty Level Two Genital Piercing Temporary License:

(a) Submit documentation approved by the Agency showing proof of having completed required specialty level two genital training listed under OAR 331-905-0010 (9) through (17), verified by a supervisor approved under OAR 331-905-0060 on a form prescribed by the Agency;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination under OAR 331-905-0070(2) and (3) within two years before the date of application;

(d) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0052

Specialty Level One Genital Piercing Supervisor

(1) An approved supervisor may supervise one specialty level one genital approved trainee per shift.

ADMINISTRATIVE RULES

(2) An approved supervisor must exercise management, guidance, and control over the activities of the specialty level one genital piercing and must exercise professional judgment and be responsible for all matters relative to the specialty level one genital piercing trainee.

(3) Supervisors must document work done by the specialty level one genital piercing trainee on a form prescribed by the Agency.

(4) An approved supervisor must notify the Agency in writing within five calendar days if a specialty level one genital piercing trainee is no longer being supervised, and must provide the number of hours of training completed on a form prescribed by the Agency.

(5) Notwithstanding any other disciplinary actions, an approved supervisor's authorization to supervise may be withdrawn by the Agency for providing incomplete or inadequate training or falsifying documentation.

(6) Supervisors must provide direct supervision to specialty level one genital piercing trainees.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0055

Requirements for Specialty Level One Genital Piercing Supervisor

(1) To be an approved supervisor for a specialty level one genital piercing trainee an individual must:

(a) Submit a completed form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000;

(b) Submit proof of having a specialty level one genital piercing license which is active with no current or pending disciplinary action;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit copies of client records demonstrating proof of having successfully performed a minimum of 40 of each specialty level one genital piercings defined under OAR 331-905-0000(14). Client records must demonstrate proof of having performed at least 3 different piercing procedures listed in OAR 331-905-0005(5); and

(f) Submit copies of client records demonstrating proof of having a minimum of two years of experience successfully performing the piercing procedures listed in paragraph (f) above;

(g) Provide a list of three professional references on a form prescribed by the Agency.

(2) Experience claimed under subsections (1)(e) and (1)(f) of this rule is subject to independent verification by the Agency.

(3) A specialty level one genital piercing supervisor must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0058

Specialty Level Two Genital Piercing Supervisor

(1) An approved supervisor may supervise one specialty level two genital trainee per shift.

(2) An approved supervisor must exercise management, guidance, and control over the activities of the specialty level two genital trainee and must exercise professional judgment and be responsible for all matters relative to the specialty level two genital piercing trainee.

(3) Supervisors must document work done by the specialty level two genital piercing trainee on a form prescribed by the Agency.

(4) An approved supervisor must notify the Agency in writing within five calendar days if a specialty level two genital piercing trainee is no longer being supervised, and must provide the number of hours of training completed on a form prescribed by the Agency.

(5) Notwithstanding any other disciplinary actions, an approved supervisor's authorization to supervise may be withdrawn by the Agency for providing incomplete or inadequate training or falsifying documentation.

(6) Supervisors must provide direct supervision to specialty level two genital piercing trainees.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0060

Requirements for Specialty Level Two Genital Piercing Supervisor

(1) To be an approved supervisor for a specialty level two genital piercing trainee an individual must:

(a) Submit a completed form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000;

(b) Submit proof of having a standard body piercing license which is active with no current or pending disciplinary action;

(c) Submit proof of having a specialty level one genital piercing license which is active with no current or pending disciplinary action;

(d) Submit proof of having a specialty level two genital piercing license which is active with no current or pending disciplinary action;

(e) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(f) Submit proof of current blood borne pathogens training from an Agency approved provider;

(g) Submit copies of client records demonstrating proof of having successfully performed a minimum of 40 of each specialty level two genital piercings defined under OAR 331-905-0000(15). Client records must demonstrate proof of having performed at least three different piercing procedures listed in OAR 331-905-0005(5); and

(h) Submit copies of client records demonstrating proof of having a minimum of two years of experience successfully performing the piercing procedures listed in paragraph (g) above;

(i) Provide a list of references on a form prescribed by the Agency.

(2) Experience claimed under subsections (1)(g) and (1)(h) of this rule is subject to independent verification by the Agency.

(3) A specialty level two genital piercing supervisor must adhere to all standards within OAR 331-905-0090, 331-905-0095, 331-905-0100, 331-905-0105, 331-905-110, 331-905-0115, 331-905-0120 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0070

Approved Specialty Body Piercing Examinations

The Agency has approved the following examinations for specialty body piercing:

(1) Written specialty level one genital piercing examination;

(2) Written specialty level two genital piercing examination; or

(3) Oregon safety, sanitation and infection control written examination;

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0075

General Specialty Body Piercing Examination Information

(1) To be eligible for examination, an applicant must meet identification requirements listed under OAR 331-030-0000.

(2) The examination is administered in English only, unless an agency approved testing contractor or vendor provides the examination in languages other than English.

(3) Examination candidates may be electronically monitored during the course of testing.

(4) Examination candidates must adhere to the maximum time allowance for each section of the examination, as established by the Agency.

(5) Taking notes, textbooks or notebooks into the examination area is prohibited.

(6) Electronic equipment and communication devices, such as personal computers, pagers and cellular telephones or any other devices deemed inappropriate by the agency, are prohibited in the examination area.

(7) Candidate conduct that interferes with the examination may result in the candidate's disqualification during or after the examination, the candidate's examination being deemed invalid, and forfeiture of the candidate's examination fees. Such conduct includes but is not limited to:

(a) Directly or indirectly giving, receiving, soliciting, and attempting to give, receive or solicit aid during the examination process;

ADMINISTRATIVE RULES

- (b) Violations of subsections (6), (7), or (8) of this rule;
- (c) Removing or attempting to remove any examination-related information, notes or materials from the examination site;
- (d) Failing to follow directions relative to the conduct of the examination; and
- (e) Exhibiting behavior that impedes the normal progress of the examination.

(8) If the candidate is disqualified from taking the examination or the candidate's examination is deemed invalid for reasons under subsection (7) of this rule, the candidate may be required to reapply, submit additional examination fees, and request in writing to schedule a new examination date, before being considered for another examination opportunity.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0080

Written Examination Retake Requirements

(1) Individuals may take failed sections of the written examination as follows:

- (a) After first failed attempt — applicant may not retake for seven calendar days;
- (b) After second failed attempt — applicant may not retake for seven calendar days;
- (c) After third failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit one of the following:

(A) An official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-905-0003, 331-905-0005 or 331-905-0010 from a career school licensed under 345 on a form prescribed by the agency; or

(B) Documentation from an Agency approved supervisor certifying completion of an additional 100 hours of training in theory, focused on the approved curriculum outlined in OAR 331-905-0003, 331-905-0005 or 331-905-0010 on a form prescribed by the Agency.

(d) After fourth failed attempt — applicant may not retake for seven calendar days;

(e) After fifth failed attempt — applicant may not retake for seven calendar days;

(f) After sixth failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit one of the following:

(A) An official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-905-0003, 331-905-0005 or 331-905-0010 from a career school licensed under 345 on a form prescribed by the Agency; or

(B) Documentation from an Agency approved supervisor certifying completion of an additional 100 hours of training in theory, focused on the approved curriculum outlined in OAR 331-905-0003, 331-905-0005 or 331-905-0010 on a form prescribed by the Agency.

(g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Agency on a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0085

Renewal of a Specialty Level One Genital or Specialty Level Two Genital Piercing License

(1) A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the renewal of a license and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) LICENSE RENEWAL: To avoid delinquency penalties, specialty level one genital or specialty level two genital piercing license renewal must be made prior to the license entering inactive status. The licensee must submit the following:

- (a) Renewal application form;
- (b) Payment of required renewal fee pursuant to 331-940-0000;
- (c) Attestation of having obtained required annual continuing education under OAR 331-905-0090, on a form prescribed by the agency. Continuing education is required whether the license is current or inactive;

(d) Attestation of current certification in cardiopulmonary resuscitation from an Agency approved provider;

(e) Attestation of current first aid training by an Agency approved provider; and

(f) Attestation of current certification in blood borne pathogens training from an Agency approved provider.

NOTE: A licensee is not required to renew the standard body piercing license if renewing a specialty level one genital or specialty level two genital piercing license.

NOTE: A licensee is not required to renew the specialty level one genital license if renewing the specialty level two genital piercing license.

(3) INACTIVE LICENSE RENEWAL: A specialty level one genital or specialty level two genital piercing license may be inactive for up to three years. If a license is inactive the licensee is not authorized to practice. When renewing a license after entering inactive status, the licensee holder must submit the following:

(a) Renewal application form;

(b) Payment of delinquency and license fees pursuant to OAR 331-940-0000;

(c) Attestation of having obtained required annual continuing education under OAR 331-905-0090 on a form prescribed by the Agency. Continuing education is required whether the license is current or inactive;

(d) Attestation of current certification in cardiopulmonary resuscitation from an Agency approved provider;

(e) Attestation of current first aid training by an Agency approved provider; and

(f) Attestation of current certification in blood borne pathogens training from an Agency approved provider.

(4) EXPIRED LICENSE: A specialty level one genital or specialty level two genital piercing license that has been inactive for more than three years is expired and the license holder must reapply and meet the requirements listed in OAR 331-905-0034, 331-905-0040 or 331-905-0050.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0090

Specialty Body Piercing Practice Standards and Prohibitions

(1) Piercing is prohibited:

(a) On the genital or nipple of a person under the age of 18 regardless of parental consent.

(b) On testes, deep shaft (corpus cavernosa), uvula, eyelids and sub-clavicle;

(c) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(d) On a person who shows signs of recent intravenous drug use;

(e) On a person with sunburn or other skin diseases or disorders of the skin such as open lesions, rashes, wounds, puncture marks in areas of treatment;

(2) Use of piercing guns is limited to piercing of the earlobe exclusively. No other part of the body or ear shall be pierced by use of a piercing gun.

(3) Piercing with a manual loaded spring operated piercing gun is prohibited.

(4) Piercing the earlobe with any type of piercing gun which does not use a pre-sterilized encapsulated stud and clasp system is prohibited.

(5) The Agency adopts the Association of Professional Piercers 2005 Procedure Manual by reference which must be used by licensees as a standard of care for body piercing best practices. The procedure manual can be located at <http://www.safepiercing.org/publications/procedure-manual/>

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0095

General Standards for Specialty Body Piercing

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

ADMINISTRATIVE RULES

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed.

(e) Ensure chemicals are stored in labeled, closed containers.

(f) Ensure that single-use disposable paper products, single-use needles, sterilized jewelry and protective gloves are used for each client. Use of towels and linens are prohibited except during body piercing procedures.

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility but separate from a restroom.

(h) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels.

(i) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client.

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums.

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(l) Ensure waste disposed of in receptacles located in non-service areas is limited to materials, which are not practice-related or used in the performance of any client services.

(m) Ensure all waste items that come in direct contact with the client's skin that cannot be cleaned and sterilized must be disposed of utilizing a "double bagging" technique: which means the waste must be completely enclosed inside a discarded glove or disposed of in a closed plastic bag that is separate from the garbage liners. The waste must be disposed of in a covered waste receptacle immediately after use.

(n) Ensure disposable sharp objects that come in contact with blood and/or body fluids must be disposed of in a sharps container.

(o) Adhere to all Centers for Disease Control and Prevention, Standard Precautions.

(p) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0100

Standards for Client Services for Specialty Body Piercing

(1) A licensee must wash hands in accordance with Subsection (2) of this rule:

(a) Prior to donning gloves to set-up of instruments used for conducting body piercing procedures;

(b) Immediately prior to donning gloves to perform a body piercing procedure;

(c) Immediately after removing gloves at the conclusion of performing a body piercing procedure and after removing gloves at the conclusion of procedures performed in the sterilization area;

(d) When leaving the work area;

(e) When coming in contact with blood or bodily fluids;

(f) Before and after performing the following acts not limited to eating, drinking, smoking, applying lip cosmetics or lip balm, handling contact lenses, or using the bathroom; or

(g) When hands are visibly soiled.

(2) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists.

(3) A new pair of disposable gloves must be worn during the treatment of each client;

(4) A minimum of one pair of disposable gloves must be used for each of the following stages of the body piercing procedure:

(a) Set-up of instruments used for conducting body piercing procedures and skin preparation of the body piercing procedure area;

(b) The body piercing procedure and post-procedure teardown; or

(c) Cleaning and disinfection of the procedure area after each use or between clients.

(5) Once gloves have been removed, they must be disposed of immediately and hand washing instructions listed in Subsection (2) of this rule must be followed.

(6) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (2) of this rule must be followed and gloves changed following hand washing.

(7) Disposable gloves must be removed before leaving the area where body piercing procedures are performed.

(8) When a licensee leaves the body piercing procedure area in the middle of a body piercing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (2) of this rule must be followed and a new pair of gloves put on when returning to the procedure area.

(9) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (2) of this rule.

(10) A client's skin must be thoroughly cleaned with an antiseptic solution.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0105

Approved Sterilization for Specialty Body Piercing

(1) Needles must be single use, used on one client, then properly disposed of in a approved sharps container defined under OAR 331-905-0000.

(2) All non-sterilized instruments or reusable instruments that come in direct contact with a client's skin or are exposed to blood or bodily fluid must be cleaned and sterilized before use on a client or re-use on another client.

(3) New gloves must be worn during any sterilization procedure.

(4) The cleaning and sterilization process listed in subsection (5) of this rule is not required if single-use prepackaged sterilized instruments, obtained from suppliers or manufacturers are used.

(5) Approved cleaning and sterilization process for non-sterilized instruments or reusable instruments includes the following ordered method after each use:

(a) Clean non-sterilized instruments or reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and bodily fluids;

(b) Clean non-sterilized instruments or reusable instruments must be rinsed and placed in an ultrasonic cleaner filled with an appropriate ultrasonic solution including but not limited to an enzymatic cleaner. The ultrasonic unit must be used according to the manufacturer's instructions. The ultrasonic unit must operate at 40 to 60 kilohertz. All hinged instruments (including but not limited to piercing forceps) must be in the open position. The ultrasonic cleaner must remain covered when in use;

(c) Remove non-sterilized instruments or reusable instruments from the ultrasonic unit. All instruments must be rinsed, air dried, and individually packaged in sterilization pouches that includes use of a chemical indicator strip to assure sufficient temperature during each sterilization cycle, the date the sterilization was performed must be applied to the sterilization pouch;

(d) Individually packaged non-sterilized instruments or reusable instruments must be sterilized by using an autoclave sterilizer, steam or chemical, registered and listed with the FDA;

(e) A steam sterilization integrator must be used to monitor the essential conditions of steam sterilization for each autoclaved load or cycle. Results must be recorded in a log book for each sterilization cycle. Each steam sterilization integrator must indicate the date the sterilization cycle took place.

(f) After sterilization, the sterilized instruments must be stored in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments.

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(6) Use of a biological monitoring system ("spore tests") must be done at least once a month, verified through an independent laboratory, to assure all microorganisms have been destroyed and sterilization achieved.

(7) The ultrasonic unit listed in subsection (5)(b) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the ultrasonic unit must be kept on file at the body art facility.

(8) All sterilization pouches with indicator strips listed in subsection (5)(c) of this rule must contain a chemical/temperature and/or humidity sensitive tapes, strips or pellets for monitoring each sterilization cycle.

(9) Sterilization pouches with indicator strips listed in subsection (5)(c) of this rule and steam sterilization integrators listed in (5)(e) of this rule must be available at all times for inspection by the Agency. Steam sterilization integrators must be kept for a minimum of sixty days.

(10) Biological spore test results listed in subsection (6) of this rule must be immediately available at all times for inspection by the Agency and kept at facility premises for a minimum of two years.

(11) The autoclave listed in subsection (5)(d) must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the autoclave must be kept on file at the body art facility.

(12) The expiration date for sterilized instruments is one year from the date of sterilization unless the integrity of the package is compromised.

(13) Sterilized instruments may not be used if the package integrity has been breached, is wet or stained, or the expiration date has exceeded without first meeting the requirements listed in Subsection (5) of this rule.

(14) All sterilized instruments used in body piercing procedures must remain stored in sterile packages and in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments until just prior to the performance of a body art procedure.

(15) If a spore test result listed in subsection (6) of this rule, is positive, a licensee must discontinue the use of that sterilizer (autoclave) until it has been serviced and a negative spore test has been recorded before putting that sterilizer back into service. Until a negative spore test has been received, the licensee must:

(a) Use an alternative sterilizer (autoclave);

(b) Use only sterilized instruments that have a sterilization date on or before the date before the last negative spore test was recorded; or

(c) Use only single use instruments.

(16) Following a negative spore test pursuant to subsection (6) of this rule, instruments which were sterilized following the receipt of the negative spore test must be repackaged and sterilized pursuant to subsection (5) of this rule, before use.

(17) Following a negative spore test to pursuant to subsection (6) of this rule the licensee or facility must contact all clients in writing who may have received services prior to receiving the negative spore test results.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0110

Client Records and Information for Specialty Body Piercing

(1) A licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

(a) Name, address, telephone number and date of birth of client;

(b) Date of each service, procedure location on the body and type of service performed on client;

(c) Name and license number of the licensee providing service;

(d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing.

(e) Complete list of the client's sensitivities to medicines or topical solutions;

(f) History of the client's bleeding disorders;

(g) Type of jewelry;

(h) Description of complications during procedure(s);

(i) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the body piercing service including possible reactions, side effects and potential complications of the service and consent to obtaining the body piercing service; and

(B) Information listed in OAR 331-905-0065 regarding informed consent for specialty body piercing procedures.

(C) After care instructions including care following service, possible side effects and complications and restrictions.

(1) Proof of age or consent consisting of one of the following:

(A) If the client is of over 18, a copy of a government issued photographic identification. A copy of the government issued photographic identification must be included in the client record;

(B) If the client is a minor written parental or legal guardian consent is required. The written parental or legal guardian consent must be submitted to the licensee by the parent or legal guardian prior to piercing the minor. The consenting parent or legal guardian must be 18 years of age and present government issued photographic identification at time of written consent. A copy of the government issued photographic identification must be included in the client record.

(C) If the client is an emancipated minor, copies of legal court documents proving emancipation and government issued photographic identification is required.

(2) A licensee may obtain advice from physicians regarding medical Information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be maintained at facility premises for a minimum of three years and must be made immediately available to the agency upon request.

(4) Client records must be typed or printed in a legible format. Client records, which are not readable by the Agency, will be treated as incomplete.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0115

Informed Consent for Specialty Body Piercing Procedures

(1) A specialty cheek piercer must provide information prescribed by the Agency to the client, regarding cheek piercing.

(2) A specialty level one genital piercer must provide information prescribed by the Agency to the client, regarding specialty level one genital piercings.

(3) A specialty level two genital piercer must provide information prescribed by the Agency to the client, regarding specialty level two genital piercings.

(4) Informed consent documents for certain body piercing procedures listed in Subsection (1), (2) and (3) of this rule is published on the Agency's website at <http://www.oregon.gov/OHLA/BAP/forms.shtml>.

(5) A specialty cheek piercer must disclose to each client receiving a specialty cheek piercing the number of cheek piercings in which the piercer has completed on clients and which the piercer can verify on a form prescribed by the Agency.

(6) A specialty level one genital piercer must disclose to each client receiving a specialty level one genital piercing the number of specific specialty level one genital piercings which the piercer has completed on clients and which the piercer can verify on a form prescribed by the Agency.

(7) A specialty level two genital piercer must disclose to each client receiving a specialty level two genital piercing the number of specific specialty level two genital piercings which the piercer has completed on clients and which the piercer can verify on a form prescribed by the Agency.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-905-0120

Initial Jewelry for Specialty Genital Piercing Services

(1) For initial piercings the Agency has adopted the Association of Professional Piercers Jewelry Standards for Initial Piercings. All standard body piercers must meet the following jewelry grade standards for initial piercings:

(a) Surgical steel that is ASTM F-138 compliant or ISO 5832-1 compliant, ISO 10993-(6,10 or 11) compliant, or ECC (European Economic Community) Nickel Directive compliant;

(b) Implant certified titanium (Ti6Al4V ELI) that is ASTM F-136 compliant or ISO 5832-3 compliant, or commercially pure titanium that is ASTM F-67 compliant;

(c) Niobium;

(d) White or yellow gold that is 14k or higher, nickel-free, and solid (no gold plated, gold-filled, or gold overlay/vermeil);

(e) Platinum;

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(f) Biocompatible polymers (plastics) including Tygon Medical Surgical Tubing 5-50HL or 5-54HL, PTFE (Teflon), Bioplast™ or any new polymer products that are USP VI compliant;

(g) Glass — Fused quartz glass, lead-free borosilicate, or lead-free soda-lime glass;

(h) Any other material that the APP determines to be appropriate for use in an initial piercing;

(i) Threaded jewelry must be internally threaded and all surfaces and ends must be free of nicks, scratches, burrs and polishing compounds.

(2) A licensee must have on the facility premises a “Mill Test Certificate” that provides evidence of a specific grade of metal with a code designation from the International Society for Testing and Materials Standard or the International Organization for Standardization.

(3) Jewelry used for initial piercings must be sterilized before use on each client in accordance with OAR 331-905-0105.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0000

Definitions

The following definitions apply to OAR chapter 331, division 910:

(1) “Affidavit of Licensure” has the meaning set forth in OAR 331-030-0040.

(2) “Agency” means the Oregon Health Licensing Agency.

(3) “Direct supervision” means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(4) “EPA” means United States Environmental Protection Agency.

(5) “FDA” means Food and Drug Administration.

(6) “Field of practice” has the definition set forth in ORS 690.350.

(7) “High-level disinfectant” means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(8) “Instruments” means equipment used during electrology services. Types of instruments include but are not limited to needles (filaments) and tweezers.

(9) “Sharps container” means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be labeled with the “Biohazard” symbol.

(10) “Official transcript” means:

(a) An original document authorized by the appropriate office in the Oregon Department of Education and certified by a career school licensed under ORS 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Original documents must be submitted directly to the Agency from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope; or

(b) A document authorized by the appropriate office in the Oregon Department of Education and certified by career school licensed under ORS 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Non-original documents shall only be accepted when, and in the manner, approved by the Agency

(11) “Practitioner” means a person licensed to perform services included within a field of practice.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690.405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0010

Electrology Temporary License

(1) An electrology temporary license pursuant to ORS 690.365 is a temporary license to perform electrology services on a limited basis, not to exceed 15 consecutive calendar days. A electrology temporary license holder;

(a) May renew up to four times in a 12 month period from the date the Agency receives the initial application. Renewals can be made consecutively with no lapse in active license dates;

(b) Must submit all requests to renew on a form prescribed by the Agency and received 15 days before electrology services are provided unless otherwise approved by the Agency.

(c) Must submit notification of a change in work location at least 24 hours before services are performed on a form prescribed by the Agency; and

(d) Must work in a licensed facility.

(2) An electrology temporary license holder must adhere to standards within OAR 331-910-0065, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690.405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0015

Application Requirements for Electrology Temporary License

An individual applying for a Electrology Temporary License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees and must be received at least 15 days before electrology services are provided to clients;

(3) Submit proof of being 18 years of age. Documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of having a high school diploma or equivalent;

(5) Submit proof of current training in blood-borne pathogens; and

(6) Attest to six months of training or experience, within the last two years, performing electrology on a form prescribed by the Agency; or

(7) Submit affidavit of licensure pursuant to OAR 331-030-0040.

(8) For the purpose of this rule training or experience includes attendance or participation at an instructional program presented, recognized, or under the sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the Agency.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690.405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0020

Electrology License

(1) An electrologist, licensed under ORS 690.365, may perform electrology services.

(2) An electrologist license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

(3) An electrology license holder must adhere to standards within OAR 331-910-0065, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690.405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0020

Electrology License

(1) An electrologist, licensed under ORS 690.365, may perform electrology services.

(2) An electrologist license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

(3) An electrology license holder must adhere to standards within OAR 331-910-0065, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690.405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0025

Application Requirements for Electrology License

(1) An individual applying for licensure to practice electrology must:

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- (a) Meet the requirements of OAR 331 division 30;
- (b) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;
- (c) Submit documentation showing proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000.

- ;
 - (d) Submit proof of having a high school diploma or equivalent.
 - (e) Provide documentation of completing a qualifying pathway.
- (2) License Pathway 1 – Graduate from a Licensed Electrology School:

(a) Submit official transcript from a licensed electrology school showing proof of completion of required electrology curriculum as determined by the agency under OAR 331-910-0005;

- (b) Pay examination fees;
- (c) Submit passing score of an Agency approved written examination in accordance with OAR 331-910-0030(1)(a) within two years from the date of application;
- (d) Submit passing score of an Agency approved practical examination in accordance with OAR 331-910-0030(1)(b) within two years from the date of application; and
- (e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

(f) An applicant is not required to provide proof of official transcripts in a field of practice if the applicant was previously licensed as an electrologist in Oregon.

(4) License Pathway 2 – Reciprocity

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of current electrology license, which is active with no current or pending disciplinary action, as an electrologist. The licensing must be substantially equivalent to Oregon licensing requirements pursuant to ORS 690.365 or if not substantially equivalent the applicant must demonstrate to the satisfaction of the Agency that the applicant has been employed or working as an electrologist full time for three of the last five years.

- (b) Pay examination fees;
- (c) Submit passing score of an Agency approved written examination in accordance with OAR 331-910-0030(1)(a) within two years from the date of application;

(d) Submit passing score of an Agency approved practical examination in accordance with OAR 331-910-0030(1)(b) within two years from the date of application; and

(e) Upon passage of all required examinations and before issuance of license, applicant must pay all license fees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0040

Written Examination Retake Requirements

(1) Failed sections of a written or examination may be retaken as follows:

- (a) After first failed attempt — applicant may not retake for seven calendar days;
- (b) After second failed attempt — applicant may not retake for seven calendar days;
- (c) After third failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the Agency;
- (d) After fourth failed attempt — applicant may not retake for seven calendar days;
- (e) After fifth failed attempt — applicant may not retake for seven calendar days;
- (f) After sixth failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the agency;

(g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Agency on a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0045

Practical Examination Retake Requirements

(1) Failed practical examinations may be retaken at a date and time determined by the Agency. Applicants retaking a failed practical must notify the Agency within 30 days before the next scheduled examination date and pay all examination fees.

(2) Applicants who fail to pass the practical examination for electrology after three attempts (initial examination plus two retakes):

- (a) Must wait 30 calendar days to retake the practical examination;
- (b) Must pay all additional fees;
- (c) Must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the agency;

(3) After third failed attempt — ability to retake, requirements for retake, or both will be determined by the Agency on a case-by-case basis.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0055

Continuing Education for Electrology License

A licensed electrologist must comply with the following continuing education requirements:

(1) Complete 8 clock hours of satisfactory continuing education courses either as one unit or combination of units, every year.

(2) Satisfactory continuing education courses must fit into the approved course of study outlined in OAR 331-910-0005, and must be obtained as follows:

- (a) 4 hours must involve participation or attendance at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, or completion and certification by an approved national home study organization; and
- (b) 4 hours may be self-study which may include the following:
 - (A) Correspondence courses including online courses;
 - (B) Review of publications, textbooks, printed material, or audio cassette(s);
 - (C) Viewing of films, videos, or slides;

(3) A licensee must report compliance with the continuing education requirement through attestation on the license renewal document. Licensees will be subject to the provisions of OAR 331-910-0060 pertaining to periodic audit of continuing education.

(4) A licensee may carry up to 8 continuing education hours forward to the next renewal cycle.

(5) Continuing education is required for renewal, every year, even if the license has been inactive or suspended.

(6) A licensee must maintain proof of continuing education for five years following the date of the continuing education hours obtained, for auditing purposes.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0065

Electrology Practice Standards and Prohibitions

(1) Electrologists are prohibited from performing services on treatment areas with high propensity towards bacterial colonization, such as nostrils and ear canals.

(2) Electrologists must first obtain written authorization from a physician licensed under ORS 677 when any of the following exists:

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- (a) Request for hair removal from moles;
- (b) Removal of eyelashes; or
- (c) The client has a pacemaker, implantable neuromodulators or other implantable electronic devices;
- (4) An electrologist may use towels and linens when providing electrology services. When using towels and linens the following standards must be met:
 - (a) Clean linens must be used for each client;
 - (b) Use of a common towel is prohibited;
 - (c) Clean towels and linens must be enclosed in a clean storage area or in a closed container until needed;
 - (d) Used linens must be disposed of or stored in a closed or covered container until laundered; and
 - (e) Used linens must be laundered either by a regular commercial laundering or by a noncommercial laundering process which includes use of commercial laundry detergent manufactured for the specific purpose of cleaning clothes, linens or other washable fabric, and immersion in hot water during the wash cycle.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0070

Standards for Client Services for Electrology

- (1) An electrologist must observe and adhere to the following hand washing and disposable glove standards when servicing clients:
 - (a) HAND WASHING: Hands must be washed or treated with an antibacterial hand sanitizer before and after treatment of each client, and before putting on disposable gloves and immediately after disposable gloves are removed;
 - (b) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists. Use of bar soap is prohibited.
- (2) An electrologist must observe and adhere to the following protective disposable glove standards when servicing clients:
 - (a) PROTECTIVE DISPOSABLE GLOVES: A new pair of disposable gloves must be worn during the treatment of each client;
 - (b) Hands must be washed in accordance with hand washing instructions listed in Subsection (1) of this rule before putting on disposable gloves and immediately after disposable gloves are removed;
 - (c) When a treatment session is interrupted disposable gloves must be removed and discarded. A new pair of disposable gloves must be put on when returning to the electrology service area.
 - (d) When a licensee leaves the earlobe piercing procedure area in the middle of a earlobe piercing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (1) of this rule must be followed and a new pair of gloves put on when returning to the procedure area.
 - (e) Disposable gloves must be removed before leaving the area where electrology services are performed.
 - (f) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (1) of this rule must be followed and gloves changed following hand washing.
 - (g) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (1) of this rule.
- (3) Disposable gloves must be worn during pre-cleaning, cleaning, rinsing, sterilizing and drying of equipment and instruments and disinfecting of surfaces;
- (4) A client's skin must be thoroughly cleaned with an astringent. If flammable the astringent should be allowed to dry.

Stat. Auth: ORS 676.607 & 676.615
Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405
Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0075

Sterilization Standards for Electrology

- (1) Needles (filaments) must be single use, used on one client, then properly disposed of in an approved sharps container defined under OAR 331-910-0000.

(2) All non-sterilized instruments or reusable instruments that come in direct contact with a client's skin or are exposed to blood or bodily fluid must be cleaned, disinfected and sterilized before use on a client or re-use on another client.

(3) New gloves must be worn during any sterilization procedure.

(4) The cleaning, disinfection and sterilization process listed in Subsection (5) of this rule is not required if single-use prepackaged sterilized instruments, obtained from suppliers or manufacturers are used.

(5) Approved cleaning, disinfection and sterilization process for non-sterilized instruments or reusable instruments includes the following ordered method after each use:

(a) Clean non-sterilized instruments or reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and bodily fluids;

(b) Disinfect non-sterilized instruments or reusable instruments by immersing instruments in a high level disinfectant. Instruments must be fully submerged to ensure contact with all surfaces for an amount of time specified in the manufacturer's instructions. If the electrologist is using an autoclave listed in subsection (e) of this rule the electrologist is not required to immerse instruments in a high level disinfectant.

(c) Clean and disinfected non-sterilized instruments or reusable instruments must be rinsed and placed in an ultrasonic unit that operates at 40 to 60 hertz which is filled with an appropriate ultrasonic solution including but not limited to an enzymatic cleaner, or rinsed, patted dry and submerged and soaked in a protein dissolving detergent or enzyme cleaner, followed by a thorough rinse. The ultrasonic cleaner must remain covered when in use;

(d) Remove non-sterilized instruments or reusable instruments from the ultrasonic unit or protein dissolving detergent or enzyme cleaner. All instruments must be rinsed, air dried, and individually packaged in sterilization pouches that include use of a chemical indicator strip to assure sufficient temperature during each sterilization cycle. The date the sterilization was performed must be applied to the sterilization pouch;

(e) Individually packaged non-sterilized instruments or reusable instruments must be sterilized by using autoclave sterilizer (steam or chemical), or dry heat sterilizer registered and listed with the FDA;

(f) After sterilization, the sterilized instruments must be stored in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments.

(6) Use of a biological monitoring system ("spore tests") must be done at least once a month, verified through an independent laboratory, to assure all microorganisms have been destroyed and sterilization achieved.

(7) All sterilization pouches listed in Subsection (5)(d) of this rule must contain a color indicator strip which measures temperature control and general functioning of the equipment.

(8) The ultrasonic unit listed in subsection (5)(c) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the ultrasonic unit must be kept on file at the body art facility.

(9) The autoclave sterilizer (steam or chemical), or dry heat sterilizer listed in Subsection (5)(e) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the autoclave sterilizer (steam or chemical), or dry heat sterilizer must be kept on file at the facility.

(10) Biological spore test results listed in subsection (6) of this rule must be immediately available at all times for inspection by the Agency and kept at facility premises for a minimum of two years. Biological spore test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number (if applicable) of the sterilizer tested.

(11) The expiration date for sterilized instruments is one year from the date of sterilization unless the integrity of the package is compromised.

(12) Sterilized instruments may not be used if the package integrity has been breached is wet or stained, or the expiration date has exceeded without first meeting the requirements listed in Subsection (5) of this rule.

(13) All sterilized instruments used during electrology services must remain stored in sterile packages and in a dry, disinfected, closed cabinet or other tightly covered container reserved for the storage of such instruments until just prior to the performance of an electrology procedure.

(14) If a biological spore test listed in subsection (6) of this rule, result is positive, a licensee must discontinue the use of that autoclave sterilizer (steam or chemical), or dry heat sterilizer until it has been serviced and a negative spore test has been recorded before putting that sterilizer back into service. Until a negative spore test has been received, the licensee must:

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(a) Use an alternative autoclave sterilizer (steam or chemical), or dry heat sterilizer;

(b) Use only sterilized instruments that have a sterilization date before the date the last negative spore test was recorded; or

(c) Use only single use instruments.

(15) Following a negative biological spore test reusable instruments which were sterilized following the receipt of the negative spore test must be repackaged and sterilized pursuant to Subsection (5) of this rule, before use.

(17) Following a negative spore test the licensee or facility must contact all clients in writing who may have received services prior to receiving the negative spore test results.

Stat. Auth: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0080

General Standards

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An electrologist licensed to perform services or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed.

(e) Ensure chemicals are stored in labeled, closed containers.

(f) Ensure that single-use disposable paper products, single-use needles (filaments) and protective gloves are used for each client.

(g) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels.

(h) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client.

(i) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums.

(j) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(k) Ensure waste disposed of in receptacles located in non-service areas is limited to materials, which are not practice-related or used in the performance of any client services.

(l) Ensure all waste items that come in direct contact with the client's skin that cannot be cleaned and disinfected must be disposed of utilizing a "double bagging" technique: which means the waste must be completely enclosed inside a discarded glove or disposed of in a closed plastic bag that is separate from the garbage liners. The waste must be disposed of in a covered waste receptacle immediately after use.

(m) Ensure disposable sharp objects that come in contact with blood and/or body fluids must be disposed of in a sharps container.

(n) Adhere to all Centers for Disease Control and Prevention, Standard Precautions.

(o) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility. If sink is located within a restroom the licensee must ensure that the sink is disinfected with a high level disinfectant upon completion of a electrology procedure or following the sterilization of equipment.

(p) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(3) An electrologist licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-910-0085

Client Records

(1) A licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

(a) Name, address, telephone number and date of birth of client;

(b) Date of each service, procedure location on the body and type of service performed on client;

(c) Name and license number of the licensee providing service. If more than one licensee is providing services on one client the licensee must initial the date of each service performed;

(d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing.

(e) Complete list of the client's sensitivities to medicines or topical solutions;

(f) History of the client's bleeding disorders;

(g) Description of complications during procedure(s);

(h) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the electrology service including possible reactions, side effects and potential complications of the service and consent to obtaining the electrology service; and

(B) After care instructions including care following service, possible side effects and complications and restrictions.

(2) A licensee may obtain advice from physicians regarding medical Information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be maintained at facility premises for a minimum of three years and must be made immediately available to the agency upon request.

(4) Client records must be typed or printed in a legible format. Client records, which are not readable by the Agency, will be treated as incomplete.

Stat. Auth: ORS 676.607 & 676.615

Stats. Implemented: ORS 676.606, 676.607, 690.350, 690.365, 690.390 & 690.405

Hist.: HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0000

Tattoo Definitions

The following definitions apply to OAR chapter 331, division 915:

(1) "Affidavit of Licensure" has the meaning set forth in OAR 331-030-0040.

(2) "Agency" means the Oregon Health Licensing Agency.

(3) "Direct supervision" means the supervisor or instructor is present in the facility and actively involved in direct oversight and training of students.

(4) "EPA" means United States Environmental Protection Agency.

(5) "FDA" means Food and Drug Administration.

(6) "Field of practice" has the definition set forth in ORS 690.350.

(7) "High-level disinfectant" means a chemical agent, registered with the EPA, which has demonstrated tuberculocidal activity.

(8) "Instruments" means equipment used during tattooing services. Types of instruments include but are not limited to needles and tubes.

(9) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal. The container must be labeled with the "Biohazard" symbol.

(10) "Official transcript" means:

(a) An original document authorized by the appropriate office in the Oregon Department of Education and certified by a career school licensed under ORS 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Original documents must be submitted directly to the Agency from the educational institution by United States Postal Service mail or other recognized mail service providers in a sealed envelope; or

(b) A document authorized by the appropriate office in the Oregon Department of Education and certified by career school licensed under ORS 345 indicating applicant identity information, field of practice(s) enrolled under, specific hour requirements for each field of practice if applicable, enrollment information and a signature by an authorized representative on file with the Agency. Non-original documents shall only be accepted when, and in the manner, approved by the Agency.

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(11) "Practitioner" means a person licensed to perform services included within a field of practice.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0010 Tattoo License

(1) A tattoo artist licensed under ORS 690.365 may perform tattooing services.

(2) A tattoo license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

(3) A tattoo license holder must adhere to all standards under OAR 331-915-0065, 331-915-0070, 331-915-0075, 331-915-0080, 331-915-0085 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0015 Application Requirements for Tattoo License

(1) An individual applying for licensure to practice tattooing must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit documentation having completed blood borne pathogens training from an agency approved provider;

(d) Submit documentation having completed cardiopulmonary resuscitation and basic first aid training from an agency approved provider;

(e) Submit documentation showing proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent; and

(g) Provide documentation of completing a qualifying pathway.

(2) License Pathway 1 — Graduate from an Oregon Licensed Career School for Tattooing:

(a) Submit official transcript from a tattooing career school under ORS 345, and approved by the Agency showing proof of completion of required tattooing curriculum as determined by the agency under OAR 331-915-0005;

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination in accordance with OAR 331-915-0030(1)(a) within two years from the date of application;

(d) Submit passing score of an Agency approved practical skills assessment examination in accordance with OAR 331-915-0030(1)(b) within two years from the date of application; and

(e) Upon passage of all required examinations and before issuance of registration license, applicant must pay all license fees.

(f) An applicant is not required to provide proof of official transcripts in a field of practice if the applicant was previously licensed as a tattoo artist in Oregon.

(3) License Pathway 2 — Reciprocity:

(a) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of current license as a tattoo artist, which is active with no current or pending disciplinary action. The licensing must be substantially equivalent to Oregon licensing requirements pursuant to ORS 690.365 or if not substantially equivalent the applicant must demonstrate to the satisfaction of the Agency that the applicant has been employed or working as a tattoo artist full time for three of the last five years.

(b) Pay examination fees;

(c) Submit passing score of an Agency approved written examination in accordance with OAR 331-915-0030(1)(a) within two years from the date of application;

(d) Submit passing score of an Agency approved practical skills assessment examination in accordance with OAR 331-915-0030(1)(b) within two years from the date of application; and

(e) Upon passage of all required examinations and before issuance of a license, applicant must pay all license fees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0020 Temporary Tattoo License

(1) A temporary tattoo license pursuant to ORS 690.365 is a temporary license to perform tattooing services on a limited basis, not to exceed 15 consecutive calendar days. A temporary tattoo license holder;

(a) May renew up to four times in a 12 month period from the date the Agency receives the initial application. Renewals can be made consecutively with no lapse in active license dates;

(b) Must submit all requests to renew on a form prescribed by the Agency. Request must be received at least 15 days before tattoo services are provided unless otherwise approved by the Agency.

(c) Must submit notification of a change in work location at least 24 hours before services are performed on a form prescribed by the Agency;

(d) Must work in a licensed facility.

(2) A temporary tattoo license holder must adhere to all standards under OAR 331-915-0065, 331-915-0070, 331-915-0075, 331-915-0080, 331-915-0085 and all applicable rules listed in OAR 331 Division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0025 Application Requirements for Temporary Tattoo License

An individual applying for a Temporary Tattoo License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees and must be received at least 15 days before standard body piercing services are provided to clients;

(3) Submit proof of being 18 years of age. Documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of current training in blood-borne pathogens; and

(5) Attest to six months of training or experience, within the last two years, performing tattooing on a form prescribed by the Agency; or

(6) Submit affidavit of licensure pursuant to OAR 331-030-0040.

(7) For the purpose of this rule training or experience includes attendance or participation at an instructional program presented, recognized, or under the sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the Agency.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 7-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; HLA 8-2012(Temp), f. & cert. ef. 5-3-12 thru 10-16-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0040 Written Examination Retake Requirements

(1) Failed sections of the written examination may be retaken as follows:

(a) After first failed attempt — applicant may not retake for seven calendar days;

(b) After second failed attempt — applicant may not retake for seven calendar days;

(c) After third failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-915-0005 from a career school licensed under ORS 345 on a form prescribed by the agency;

(d) After fourth failed attempt — applicant may not retake for seven calendar days;

(e) After fifth failed attempt — applicant may not retake for seven calendar days;

(f) After sixth failed attempt — applicant may not retake for 30 calendar days, must pay all additional fees and must submit an official transcript certifying completion of an additional 100 hours of instruction in the-

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ory, focused on the approved curriculum outlined in OAR 331-915-0005 from a career school licensed under ORS 345 on a form prescribed by the Agency;

(g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Agency on a case-by-case basis.

(2) Applicants retaking the examination must meet the requirements under OAR 331-030-0000.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0045

Practical Examination Retake Requirements

(1) Failed practical examinations may be retaken at a date and time determined by the Agency. Applicants retaking a failed practical must notify the Agency within 30 days before the next scheduled examination date and pay all examination fees

(2) Applicants who fail to pass the practical examination for tattooing after three attempts (initial examination plus two retakes):

(a) Must wait 30 calendar days to retake the practical examination;

(b) Must pay all additional fees;

(c) Must submit an official transcript certifying completion of an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-910-0005 from a career school licensed under ORS 345 on a form prescribed by the agency;

(3) After fourth failed attempt — ability to retake, requirements for retake, or both will be determined by the Agency on a case-by-case basis.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0065

Tattoo Practice Standards and Prohibitions

(1) Inks, dyes, or pigments must be purchased from a commercial supplier or manufacturer. Products banned or restricted by the Food and Drug Administration must not be used.

(2) Notwithstanding OAR 331-930-0025, tattoo artists must disinfect plastic or acetate stencil used to transfer the design to the client's skin, if not using disposable stencils. If the plastic or acetate stencil is reused the licensee must thoroughly clean and rinse and immerse in a high level disinfectant according to the manufacturer's instructions.

(3) Upon completion of a tattoo service, the following procedures are required:

(a) The skin must be cleansed; excluding the area surrounding the eyes, with a clean single-use paper product saturated with an antiseptic solution;

(b) A clean covering must be placed over designs and adhered to the skin; and

(c) An absorbent material must be incorporated into the covering to prevent the spread of bodily fluids and cross contamination, unless the clean covering listed in subsection (3)(a) of this rule is an impenetrable barrier which prevents the spread of bodily fluids and cross contamination.

(4) Tattooing services may be performed on a person under 18 years of age when authorized or prescribed by a physician's statement.

(5) Tattooing is prohibited:

(a) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On a person who show signs of intravenous drug use;

(c) On a person with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;

(d) On a person under 18 years of age, regardless of parental or legal guardian consent unless the requirements of subsection (4) of this rule are met.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0070

General Standards for Tattooing

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed.

(e) Ensure chemicals are stored in labeled, closed containers.

(f) Ensure that single-use disposable paper products, single-use needles, and protective gloves are used for each client. Use of towels and linens are prohibited.

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility but separate from a restroom unless operating as a temporary earlobe piercing licensee.

(h) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels.

(i) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client.

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums.

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(l) Ensure waste disposed of in receptacles located in non-service areas is limited to materials, which are not practice-related or used in the performance of any client services.

(m) Ensure all waste items that come in direct contact with the client's skin that cannot be cleaned and sterilized must be disposed of utilizing a "double bagging" technique: which means the waste must be completely enclosed inside a discarded glove or disposed of in a closed plastic bag that is separate from the garbage liners. The waste must be disposed of in a covered waste receptacle immediately after use.

(n) Ensure disposable sharp objects that come in contact with blood and/or body fluids must be disposed of in a sharps container.

(o) Adhere to all Centers for Disease Control and Prevention, Standard Precautions.

(p) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances must be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0075

Standards for Client Services for Tattooing

(1) A licensee must wash hands in accordance with Subsection (2) of this rule:

(a) Prior to donning gloves to set-up of instruments used for conducting a tattoo procedure;

(b) Immediately prior to donning gloves to perform a tattoo procedure;

(c) Immediately after removing gloves at the conclusion of performing a tattoo procedure and after removing gloves at the conclusion of procedures performed in the sterilization area;

(d) When leaving the work area;

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- (e) When coming in contact with blood or bodily fluids;
 - (f) Before and after performing the following acts not limited to eating, drinking, smoking, applying lip cosmetics or lip balm, handling contact lenses, or using the bathroom; or
 - (g) When hands are visibly soiled.
- (2) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists.
- (3) A new pair of disposable gloves must be worn during the treatment of each client;
- (4) A minimum of one pair of disposable gloves must be used for each of the following stages of the tattooing procedure:
- (a) Set-up of instruments used for conducting tattooing procedures and skin preparation of the tattooing procedure area;
 - (b) The tattooing procedure and post-procedure teardown; or
 - (c) Cleaning and disinfection of the procedure area after each use or between clients.
- (5) Once gloves have been removed, they must be disposed of immediately and hand washing instructions listed in Subsection (2) of this rule must be followed.
- (6) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (2) of this rule must be followed and gloves changed following hand washing.
- (7) Disposable gloves must be removed before leaving the area where body piercing procedures are performed.
- (8) When a licensee leaves the tattooing procedure area in the middle of a tattooing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (2) of this rule must be followed and a new pair of gloves put on when returning to the procedure area.
- (9) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (2) of this rule.
- (10) A client's skin must be thoroughly cleaned with an antiseptic solution.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0080

Approved Sterilization Standards for Tattooing

- (1) Needles must be single use, used on one client, then properly disposed of in a approved sharps container defined under OAR 331-915-0000.
- (2) All non-sterilized instruments or reusable instruments that come in direct contact with a client's skin or are exposed to blood or bodily fluid must be cleaned and sterilized before use on a client or re-use on another client.
- (3) New gloves must be worn during any sterilization procedure.
- (4) The cleaning and sterilization process listed in subsection (5) of this rule is not required if single-use prepackaged sterilized instruments, obtained from suppliers or manufacturers are used.
- (5) Approved cleaning and sterilization process for non-sterilized instruments or reusable instruments includes the following ordered method after each use:
- (a) Place non-sterilized instruments or reusable instruments in an ultrasonic cleaner filled with an appropriate ultrasonic solution including but not limited to an enzymatic cleaner. The ultrasonic unit must be used according to the manufacturer's instructions. The ultrasonic unit must operate at 40 to 60 kilohertz. The ultrasonic cleaner must remain covered when in use;
 - (b) Remove non-sterilized instruments or reusable instruments from the ultrasonic unit. Clean non-sterilized instruments or reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and bodily fluids;
 - (c) Rinse, air dry, and individually packaged, all instruments in sterilization pouches that includes use of a chemical indicator strip to assure sufficient temperature during each sterilization cycle, the date the sterilization was performed must be applied to the sterilization pouch;
 - (d) Individually packaged non-sterilized instruments or reusable instruments must be sterilized by using an autoclave sterilizer, steam or chemical, registered and listed with the FDA;

(e) A steam sterilization integrator must be used to monitor the essential conditions of steam sterilization for each autoclaved load or cycle. Results must be recorded in a log book for each sterilization cycle. Each steam sterilization integrator must indicate the date the sterilization cycle took place. Steam sterilization integrators must be kept for a minimum of sixty days.

(f) After sterilization, the sterilized instruments must be stored in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments.

(6) Use of a biological monitoring system ("spore tests") must be done at least once a month, verified through an independent laboratory, to assure all microorganisms have been destroyed and sterilization achieved.

(7) The ultrasonic unit listed in subsection (5)(a) of this rule must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the ultrasonic unit must be kept on file at the body art facility.

(8) All sterilization pouches with indicator strips listed in subsection (5)(c) of this rule must contain a chemical/temperature and/or humidity sensitive tapes, strips or pellets for monitoring each sterilization cycle.

(9) Sterilization pouches with indicator strips listed in subsection (5)(c) of this rule and steam sterilization integrators listed in (5)(e) of this rule must be available at all times for inspection by the Agency.

(10) Biological spore test results listed in subsection (6) of this rule must be immediately available at all times for inspection by the Agency and kept at facility premises for a minimum of two years.

(11) The autoclave listed in subsection (5)(d) must be used, cleaned, and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the autoclave must be kept on file at the body art facility.

(12) The expiration date for sterilized instruments is one year from the date of sterilization unless the integrity of the package is compromised.

(13) Sterilized instruments may not be used if the package integrity has been breached, is wet or stained, or the expiration date has exceeded without first meeting the requirements listed in Subsection (5) of this rule.

(14) All sterilized instruments used in tattooing procedures must remain stored in sterile packages and in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of such instruments until just prior to the performance of a tattooing procedure.

(15) If a biological spore test listed in subsection (6) of this rule, result is positive, a licensee must discontinue the use of that sterilizer (autoclave) until it has been serviced and a negative spore test has been recorded before putting that sterilizer back into service. Until a negative spore test has been received, the licensee must:

- (a) Use an alternative sterilizer (autoclave);
- (b) Use only sterilized instruments that have a sterilization date on or before the date before the last negative spore test was recorded; or
- (c) Use only single use instruments.

(16) Following a negative spore test instruments which were sterilized following the receipt of the negative spore test must be repackaged and sterilized pursuant to subsection (5) of this rule, before use.

(17) Following a negative spore test the licensee or facility must contact all clients in writing who may have received services prior to receiving the negative spore test results.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-915-0085

Client Records and Information for Tattooing

(1) A licensee is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

- (a) Name, address, telephone number and date of birth of client;
- (b) Date of each service, procedure location on the body and type of service performed on client;
- (c) Name and license number of the licensee providing service;
- (d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing.
- (e) Complete list of the client's sensitivities to medicines or topical solutions;
- (f) History of the client's bleeding disorders;
- (g) Description of complications during procedure(s);

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(h) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the tattooing service including possible reactions, side effects and potential complications of the service and consent to obtaining the tattooing service; and

(B) After care instructions including care following service, possible side effects and complications and restrictions.

(2) A licensee may obtain advice from physicians regarding medical information needed to safeguard client and licensee. Advice from the physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be maintained at facility premises for a minimum of three years and must be made immediately available to the agency upon request.

(4) Client records must be typed or printed in a legible format. Client records, which are not readable by the Agency, will be treated as incomplete.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0000 Facility License

(1) A location, where services are performed in a field of practice must be a licensed facility defined under ORS 690.350 and licensed under 690.365.

(2) The holder of a facility license must be a natural person.

[NOTE: a natural person is a living individual human being. The facility license holder may be a facility owner, facility manager, or any other natural person.]

(3) A facility license is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(4) A facility license is not transferable; the license is not transferable from person-to-person or from location to location. If an existing facility moves or relocates to a new physical address, the facility license holder must submit a new application and meet requirements of OAR 331-925-0005. A natural person may hold more than one facility license, but must submit a separate application, pay required fees and qualify for a facility license for each location.

(5) An electrology, body piercing or tattoo facility licensed before January 1, 2012, are valid only for the fields of practice for which those licenses were issued. In order to add additional fields of practice the owner must apply and qualify for a new body art facility license pursuant to OAR 331-925-0005.

(6) A facility must adhere to all standards within OAR chapter 331, division 930.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0005

Application Requirements for Facility Licensure

A facility license may be issued if the applicant:

(1) Meets the requirements of OAR 331 division 30;

(2) Submits the following:

(3) A completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required fees;

(4) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000,

(5) Provides a map or directions to the facility if it is located in a rural or isolated area;

(6) Provides a list of licensees providing services in the facility.

(7) Proof of a current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007;

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0010

Temporary Facility License

(1) A temporary facility license holder defined under ORS 690.350 and licensed under 690.365, may perform services in a field of practice under 690.350.

(2) The holder of a temporary facility license must be a natural person.

(3) A temporary facility license is valid for a limited time not to exceed 15 consecutive calendar days, at settings such as fairs, carnivals or bazaars.

(4) A facility must adhere to all standards within OAR chapter 331, division 930.

(5) A temporary facility license is not an event facility license pursuant to OAR 331-925-0030 which is comprised of individual booths where services in a field of practice are performed.

(6) If a facility owner licensed under OAR 331-925-0000 intends to operate a facility on a limited basis, away from the facility address on file with the Agency, they must obtain a temporary facility license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0015

Application Requirements for Temporary Facility License

To be issued a temporary facility license the applicant must:

(1) Meets the requirements of OAR 331 division 30;

(2) Submit the following:

(3) A completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required fees;

(4) Proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000,

(5) A map or directions to the facility if it is located in a rural or isolated area;

(6) A list of licensees providing services in the facility.

(7) A current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007;

(8) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to applying for a facility license.

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0020

Mobile Facility License

(1) Mobile facility license defined under ORS 690.350 means an authorization issued under 690.365 to operate a facility outside of or away from a permanent physical location within an approved enclosed transportable vehicle, such as recreational vehicles or trailers, which has the ability to transport the business operation to multiple locations in the State of Oregon during specific approved periods of time.

(2) A mobile facility is limited to no more than 15 consecutive calendar days at one physical location.

(3) A mobile facility must adhere to all standards within OAR chapter 331, division 930.

(4) The holder of a mobile facility license must be a natural person.

[NOTE: a natural person is a living individual human being. The mobile facility license holder may be a facility owner, facility manager, or any other natural person.]

(5) A mobile facility license is not transferable; the license is not transferable from person-to-person. Requirements under OAR 331-925-0025 must be met.

(6) A mobile facility license holder must comply with the following requirements:

(a) Submit written notification on a form prescribed by the Agency for each new physical location where services will be provided in a field of practice. The notification form must be received by the Agency at least 24 hours before services are performed at the new physical location and may

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be submitted by regular United States Postal Service or by electronic mail or in person at the office.

(b) Remain stationary while services in a field of practice are performed;

(c) Provide each client, verbally and in writing, with the mobile facility name, mobile facility license number, license number and name of the person providing service, permanent address on file with the Agency and telephone number; and

(d) Must display the mobile facility name on file with the Agency on the outside of the mobile facility which is easily visible from the street.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0025

Application Requirements for Mobile Facility License

To be issued a mobile facility license the applicant must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit the following:

(3) A completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required fees;

(4) Documentation showing proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(5) A map or directions to the facility if it is located in a rural or isolated area;

(6) A list of licensees providing services in the facility.

(7) A current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007;

(8) A current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to applying for a facility license.

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0030

Event Facility License

(1) Event facility license defined under ORS 690.350 means an authorization issued under 690.365 to operate a facility outside and away from a permanent physical location for specific approved period of time not to exceed 15 consecutive calendar days, for convention, educational, demonstration and exhibition purposes.

(2) An event facility is comprised of individual booths where services in a field of practice are provided.

(3) A representative of the event facility must be available at all times when services are being provided.

(4) An event facility must be inspected by the Agency before services are provided in a field of practice.

(5) An event facility must adhere to all standards within OAR chapter 331, division 930.

(6) Event facility owners must provide a hot and cold running water station for every 10 licensed individuals in a field of practice.

(7) The holder of an event facility license must be a natural person.

[NOTE: a natural person is a living individual human being. The event facility license holder may be an event facility owner, event facility manager, or any other natural person.]

(8) An event facility license is not transferable; the license is not transferable from person-to-person. Requirements under OAR 331-925-0035 must be met.

(9) For the purpose of this rule a "booth" is 10 feet by 10 feet or 100 square feet of floor space and limited to two licensees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0035

Application Requirements for an Event Facility License

To be issued an event facility license the applicant must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit completed application form prescribed by the Agency and payment of the required application fees which must be received by the Agency 30 days before the start of the event.

(3) Submit documentation showing proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(4) Provide a map or directions to the facility if it is located in a rural or isolated area;

(5) Submit current registration as required by Secretary of State, Corporations Division pursuant to ORS 648.007;

(6) Submit current copy of the Assumed Business Name (ABN) filing if applicant is operating under an assumed business name prior to applying for a facility license.

(7) Pay all licensing fees.

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of State, Corporations Division under ORS 648.005 through 648.990.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0040

Renewal of a Facility or Mobile Facility License

(1) A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the renewal of a license and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) Facility license renewal under OAR 331-925-0005 or 331-925-0025 this rule is valid for one year.

(3) LICENSE RENEWAL: To avoid delinquency penalties, a facility or mobile facility license renewal must be made prior to the license entering inactive status. The licensee must submit the following:

(a) Renewal application form;

(b) Payment of required renewal fee pursuant to 331-940-0000;

(4) INACTIVE LICENSE RENEWAL: A facility or mobile facility license may be inactive for up to three years. A licensee who is inactive is not authorized to practice. When renewing after entering inactive status, the licensee holder must submit the following:

(a) Renewal application form;

(b) Payment of delinquency and license fees pursuant to OAR 331-940-0000;

(5) EXPIRED LICENSE: A facility or mobile facility license that has been inactive for more than three years is expired and the license holder must reapply and meet the requirements listed in 331-925-0005 or 331-925-0025.

(6) LICENSE RENEWAL — FACILITY LICENSE ISSUED PRIOR TO JANUARY 1, 2012. Electrology, body piercing and tattoo facilities and mobile facilities licensed before January 1, 2012 must apply and qualify for a new body art facility license pursuant to OAR 331-925-0005 or 331-925-0025 on or before the electrology, body piercing or tattoo license becomes inactive. The applicant must designate a natural person as the facility or mobile license holder.

(7) If a facility changes ownership, the new owner must apply for a new facility license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0045

Posting Requirements

Licensees are subject to the requirements of OAR 331-030-0020.

(1) All facility licenses must be posted in public view.

(2) All facility license holders must post the most recent inspection certificate in public view on the facility premises.

(3) Each booth within an event facility must post the inspection certificate in public view within the booth.

(4) A licensee in a field of practice performing services in any facility must post a current active license in public view. A licensee in a field of

ADMINISTRATIVE RULES

practice may temporarily conceal the address printed on the license document with a covering that is removable.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0050

Facility Standards

Facility standards apply to all licensees under ORS 690.350 unless otherwise specified by rule.

(1) A facility license holder licensed under OAR chapter 331, division 925 must:

(a) Require each individual working within the facility premises providing services in a field of practice be licensed with the Agency;

(b) Provide a screened or separated area away from public access and viewing, isolated from a reception or waiting area, when services are conducted upon breasts, nipples, genitals or buttocks;

(c) Allow the Agency's representative to inspect the facility or conduct an investigation. Obstructing or hindering the normal progress of an investigation or the inspection, threatening or exerting physical harm, or enabling another individual or employee to impede an investigation or inspection may result in disciplinary action;

(d) Ensure waste from toilets or lavatories be discharged directly into a public sewer or by a method meeting the requirements of ORS Chapter 454;

(e) Have a sterilization area separated from public areas, service areas and restrooms where decontamination and sterilization of reusable instruments is performed. This rule does not apply to electrology license holders and temporary earlobe piercing license holders.

(f) All surfaces in areas where decontamination and sterilization of reusable instruments are performed must be non-porous;

(g) Hand washing accommodations must be provided in work areas where licensees are exposed to hazardous materials, which will have a harmful effect on or be absorbed through the skin if the contamination is not removed;

(h) Maintain washing accommodations in a clean and sanitary condition;

(i) Ensure all floors, walls and procedure surfaces including counters, tables, and chairs are easily cleanable, non-absorbent and non-porous where services are provided;

(2) When body piercing or tattoo services are provided in a cosmetology facility, body piercing or tattoo services must be separated from cosmetology services by use of a solid barrier to prevent contact with irritants. Electrology services are excluded from this rule.

(3) The facility must comply with all applicable rules and regulations of the Agency and other federal, state, county and local agencies. This includes the following:

(a) Building, fire, plumbing and electrical codes, and with exit and fire standards established by the Building Codes Agency, the Office of the State Fire Marshal;

(b) Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875.

(c) Occupational Safety and Health Act Blood Borne Pathogens Standards under 29 CFR 1910:1030 this includes but is not limited to: individuals providing services in a field of practice, facility owners; and other employees on the facility premises.

(d) ORS Chapter 654 and the Oregon Safe Employment Act if an employee/employer relationship exists.

(e) All applicable Occupational Safety and Health Act standards if an employee/employer relationship exists.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415

Hist.: HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-925-0055

Standards for Facilities Located in Residence

A facility located in a residence must comply with all standards listed in OAR chapter 331, division 925 in addition to the following criteria, unless otherwise specified by rule:

(1) Have an identifying house number or a sign, which is easily visible from the street and indicates the location of the facility;

(2) Be equipped with the structures, accommodations, and equipment which the Agency requires for all facilities; and

(3) The living area of the home must be separated from the facility by solid walls extending from floor to ceiling with any connecting doors kept closed while the facility is in actual operation.

Stat. Auth.: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats Implemented: ORS 676.607, 676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415

Hist.: HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0010

Schedule of Penalties for Facility License Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of facility license laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Operating or purporting to operate a facility without a valid facility license is a violation of ORS 690.360(d):

(a) Never licensed:

(A) 1st offense: \$500;

(B) 2nd offense: \$1000;

(C) 3rd offense: \$2500

(b) Inactive or expired license:

(A) 1st offense: \$200;

(B) 2nd offense: \$500;

(C) 3rd offense: \$1,000

(c) License or Authorization, Suspended or Revoked:

(A) 1st offense: \$2,500;

(B) 2nd offense: \$5,000;

(C) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(2) Allowing an unlicensed individual or revoked licensee to practice in a field of practice is a violation of ORS 690.360(f) or OAR 331-925-0050 (1)(a)

(a) Allowing an employee or unlicensed individual or revoked licensee:

(A) 1st offense: \$1000;

(B) 2nd offense: \$2,500;

(C) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(b) Allowing an Employee or individual with inactive, suspended, or expired license:

(A) 1st offense: \$200

(B) 2nd offense: \$500

(C) 3rd offense: \$1000

(3) Failing to allow an Agency enforcement officer to inspect the facility when it is open for business is a violation of OAR 331-925-0050(1)(c) and will result in monetary penalties and any other actions allowed by law.

(a) 1st offense: \$1500

(b) 2nd offense: \$2500

(c) 3rd offense: \$5000

(4) Operating or purporting to operate an event facility without first obtaining a current valid event facility permit is a violation of ORS 690.360(d)

(a) \$5000 per violation

(5) Failing to meet the specifications and standards required under OAR 331-925-0005(3) in a facility may result in an emergency suspension of the facility license until the violation is corrected.

Stat. Auth.: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0020

Schedule of Penalties for Practitioner Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of practitioner licensing laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

ADMINISTRATIVE RULES

(1) Performing, attempting to perform, or purporting to perform services in a field of practice without a license to perform services in that field of practice of ORS 690.360(1)(a) or (c).

(a) License or authorization never held:

(A) 1st offense: \$2,500;

(B) 2nd offense: \$5,000;

(C) 3rd offense: Monetary penalty or any other actions allowed by law including refusal to issue a new authorization to practice.

(b) License or authorization inactive or expired:

(A) 1st offense: \$200;

(B) 2nd offense: \$500;

(C) 3rd offense: \$1000.

(c) License or authorization suspended or revoked:

(A) 1st offense: \$2,500;

(B) 2nd offense: \$5,000;

(C) 3rd offense: Monetary penalty or any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(2) Performing or attempting to perform services in a field of practice outside a licensed facility is a violation of ORS 690.360(1)(b)

(a) 1st offense: \$500;

(b) 2nd offense: \$1000;

(c) 3rd offense: \$2,500

(4) A body piercing trainee license holder performing body piercing when not under the direct supervision of their supervisor is a violation of OAR 331-900-0020 for standard body piercing; or OAR 331-905-0011 or 331-905-0013 for specialty body piercing:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(5) Failing, as a supervisor, to provide supervision to their trainee in accordance with OAR 331-900-0050 for standard body piercing; OAR 331-905-0052 for specialty level one body piercing, OAR 331-905-0058 for specialty level two body piercing in addition to any other disciplinary actions, an approved supervisor's authorization to supervise may be withdrawn by the Agency:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0030

Schedule of Penalties for License Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of license laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Altering with fraudulent intent or fraudulent use of a license or authorization issued by the agency is a violation of ORS 690.360(1)(i) or ORS 690.360(1)(j):

(a) 1st offense: \$1,500;

(b) 2nd offense: \$3,500;

(c) 3rd offense: \$5,000.

(2) Failing to post a valid license or authorization issued by the agency or the most recent inspection certificate in public view is a violation of OAR 331-925-0045

(a) 1st offense: \$100

(b) 2nd offense: \$200

(c) 3rd offense: \$500

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0040

Schedule of Penalties for Board of Body Art Standards Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Board of Body Art Standards Violations laws and rules. This schedule applies, except at the discretion of

the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of 331-020-0060 apply.

(1) Any violation of a Mobile Facility License listed in OAR 331-925-0020:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(2) Any violation of a facility standard listed in OAR 331-925-0050(1) or (2) excluding (1)(a) and (1)(c):

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(3) Any violation of a Standard for Facilities Located in Residence listed in OAR 331-925-0055:

(a) 1st offense: \$300;

(b) 2nd offense: \$500;

(c) 3rd offense: \$1000.

(4) Any violation of a General Standard listed in OAR 331-900-0097 for earlobe piercing; OAR 331-900-0115 for standard body piercing; OAR 331-905-0095 for specialty body piercing; OAR 331-910-0080 for electrology; or OAR 331-915-0070 for tattooing;

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(5) Any violation of Standards for Client Services listed in OAR 331-900-0098 for earlobe piercing; OAR 331-900-0120 for standard body piercing, OAR 331-905-0100 for specialty body piercing; OAR 331-910-0070 for electrology; or OAR 331-915-0075 for tattooing:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(6) Failing to sterilize all instruments that come in direct contact with a client's skin or are exposed to blood or bodily fluid or use single use needles is a violation of OAR 331-900-0125(1) and (2) for body piercing; OAR 331-905-105(1) and (2) for specialty body piercing; OAR 331-910-0075(1) and (2) for electrology; or OAR 331-915-0080(1) and (2) for tattooing;

(a) 1st offense: \$1000;

(b) 2nd offense: \$2,500;

(c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder

(7) Failing to properly use approved sterilization modes or procedures is a violation of OAR 331-900-0125 excluding (1), (2), (9) and (10) for body piercing; OAR 331-905-0105 excluding (1), (2), (9) and (10) for specialty body piercing; OAR 331-910-0075 excluding (1), (2), and (10) for electrology; or OAR 331-915-0080 excluding (1), (2), (9) and (10) for tattooing:

(a) 1st offense: \$1000;

(b) 2nd offense: \$2,500;

(c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder

(8) Failing to maintain monthly Biological test results, chemical indicator strips and steam sterilization integrators on the premises of the facility or allow an enforcement officer access to review those records immediately upon request is a violation of OAR 331-900-0125 (9) or (10) for body piercing; OAR 331-905-0105 (9) and (10) for specialty body piercing; OAR 331-910-0075(10) for electrology; or OAR 331-915-0080(9) and (10) for tattooing:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(9) Failing to collect and maintain complete client records for each client on the premises of the facility or allow an enforcement officer access to review client records immediately upon request is a violation of OAR 331-900-0099 for earlobe piercing; OAR 331-900-0130 for standard body piercing, OAR 331-905-0110 for specialty body piercing; OAR 331-910-0085 for electrology; or OAR 331-915-0085 for tattooing:

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

(a) 1st offense: \$500;

(b) 2nd offense: \$1,000;

(c) 3rd offense: \$2,500.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

ADMINISTRATIVE RULES

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0050

Schedule of Penalties for Body Piercing Standards and Prohibited Services

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Body Piercing Standards and Prohibited Services laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Violation of an Earlobe Piercing Standard by is a violation of OAR 331-900-0095:

- (a) 1st offense: \$500;
- (b) 2nd offense: \$1,000;
- (c) 3rd offense: \$2,500.

(2) Providing a piercing service that is prohibited is a violation of OAR 331-900-0100 excluding (1)(c) for standard body piercing or OAR 331-905-0090 excluding (1)(c) for specialty body piercing:

- (a) 1st offense: \$1000;
- (b) 2nd offense: \$2,500;
- (c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(3) Performing, attempting to perform, or purporting to perform a piercing service that is prohibited under OAR 331-900-0100(1)(c) for standard body piercing or OAR 331-905-0090(1)(c) for specialty body piercing: or a piercing service listed as a specialty level one or specialty level two body piercing without a specialty level one or specialty level two body piercing license is a violation of ORS 690.360(1)(a) or (c):

- (a) 1st offense: \$2,500;
- (b) 2nd offense: \$5,000;
- (c) 3rd offense: Monetary penalty or any other actions allowed by law including refusal to issue a new authorization to practice.

(4) Violation of an initial jewelry piercing standard is a violation of OAR 331-900-0105 for standard body piercing or OAR 331-905-0120 for specialty body piercing:

- (a) 1st offense: \$500;
 - (b) 2nd offense: \$1,000;
 - (c) 3rd offense: \$2,500.
- Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0060

Schedule of Penalties for Electrologist Practice Restrictions

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Electrologist Practice Restrictions laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Performing a prohibited service is a violation of OAR 331-910-0065 excluding (4):

- (a) 1st offense: \$1000;
- (b) 2nd offense: \$2,500;
- (c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(2) Failing to adhere to towels or linens requirements listed in OAR 331-910-0065(4):

- (a) 1st offense: \$300;
 - (b) 2nd offense: \$500;
 - (c) 3rd offense: \$1,000.
- Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

331-950-0070

Schedule of Penalties for Tattoo Practice Standards and Prohibitions

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Tattoo Practice Standards and

Prohibitions laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of OAR 331-020-0060 apply.

(1) Violation of a Tattoo Practice Standards as listed in OAR 331-915-0065(1),(2), or (3):

- (a) 1st offense: \$500;
- (b) 2nd offense: \$1,000;
- (c) 3rd offense: \$2,500.

(2) Performing a prohibited service is a violation of OAR 331-915-0065(5):

- (a) 1st offense: \$1000;
- (b) 2nd offense: \$2,500;
- (c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12

Oregon State Lottery Chapter 177

Rule Caption: Establishes maximum payout with multiple winning tickets; selling bonus calculation; claiming prize at Lottery.

Adm. Order No.: LOTT 4-2012(Temp)

Filed with Sec. of State: 6-29-2012

Certified to be Effective: 6-29-12 thru 12-21-12

Notice Publication Date:

Rules Amended: 177-094-0080, 177-094-0085

Subject: The Oregon Lottery® has initiated permanent rulemaking to establish the maximum annual payout when there are more than three winning tickets for the Win for LifeSM \$1,000 a week top prize in a single drawing, the calculation of the retailer selling bonus under such circumstances, and to require in-person presentation of a winning ticket for the Win for LifeSM top prize of \$1,000 a week for life at Lottery Headquarters in Salem, Oregon.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-094-0080

Prizes

(1) General: Prizes for a winning ticket are determined by matching each horizontal set in the ticket's game play with the winning numbers from the relevant drawing. [Table not included. See ED. NOTE.]

(2) Prize Percentage Payout: The number of prizes for the Win for LifeSM game is not predetermined by the Lottery. The overall prize percentage payout for the Win for LifeSM game is estimated at approximately 65% over time, but the actual prize payout may vary from day-to-day and year-to-year due to factors that include, but are not limited to, the numbers of players participating each day and the number of winning wagers.

(3) Disputes: In the event of a dispute over the value of a prize or whether a ticket contains winning numbers, the Director's determination is controlling.

(4) Multiple Prizes:

(a) Subject to the validation requirements in OAR 177-094-0060, for each drawing, a player may receive multiple prizes on each ticket for which a ticket containing a winning game play is eligible.

(b) Only the top-prize associated with each set of numbers within the Win for LifeSM, \$50,000, \$20,000, and \$10,000 prize categories shall be paid.

(5) Claiming a Prize: Prize payments must be claimed, and shall be made, in accordance with the provisions of OAR 177-070-0025. Notwithstanding OAR 177-070-0025(2) and subject to section (7) of this rule, a person who claims a winning ticket for the Win for LifeSM top prize of \$1,000 a week for life must present the winning ticket and completed claim form in person, at Lottery Headquarters in Salem, Oregon.

(6) Payment of Prizes: Upon validation of a winning ticket, a prize resulting from that winning ticket shall be paid in one lump-sum except for the Win for LifeSM prize of \$1,000 per week for life.

(7) Win for LifeSM Top Prize:

(a) General: Only one natural person may claim a winning ticket of the Win for LifeSM top prize of \$1,000 per week for life and receive payment of the top prize. A Win for LifeSM top prize cannot be shared by multiple owners of a single winning ticket. In the event a single winning ticket

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is owned by more than one natural person, the individual owners with an ownership interest in the ticket must identify the natural person who will claim the ticket and receive the top prize on a form provided by the Lottery.

(b) Payment Options: The Win for LifeSM top prize is \$1,000 per week for life and shall be paid, based upon a selection made by the winner, either as:

(A) Weekly: A prize payment of \$1000 each week beginning on the date prize payment is initiated upon validation of the winning ticket and thereafter on the same day each week, or if such day falls on a non-business day, then the next business day; or

(B) Annually: A payment of \$52,000 paid annually beginning on the date prize payment is initiated upon validation of the winning ticket and thereafter on the anniversary date of the first payment, or if such date falls on a non-business day, then the first business day following the anniversary date of the first payment.

(c) Payments to Cease upon Winner's Death: The Win for LifeSM top prize of \$1,000 per week for life will be paid to the winning player until such time as the winning player dies at which time all further prize payments shall cease.

(d) Five-Year Guaranteed Payment: Notwithstanding subsection (c) of this section, if the prize winner dies within five years of the date of prize validation, the Lottery shall pay any remaining prize payments the prize winner would have received within the first five years after prize validation in one lump sum to the individual designated on a beneficiary designation form or to the prize winner's estate.

(e) Maximum Five-Year Guaranteed Payment: Notwithstanding subsections (c) and (d) of this section, for Win for LifeSM tickets purchased on or after December 1, 2010, if the prize winner dies within five years of the date of prize validation, the Lottery shall pay any remaining prize payment the prize winner would have received within the first five years after prize validation in one lump sum, up to a maximum of \$260,000, to the individual designated on a beneficiary designation form or to the prize winner's estate.

(f) Election of Payment Schedule:

(A) Limitations of Election: At the time of the validation of a winning Win for LifeSM ticket for the top prize of \$1000 per week for life, the winner of that prize must elect either the weekly or annual prize payment schedule described in subsection (b) of this section. A winner who elects the annual payment schedule cannot subsequently convert to the weekly payment schedule. The election of the annual payment schedule is irrevocable. A winner who elected the weekly payment schedule may convert to the annual payment schedule at any time, and the Lottery will issue payment to the winner for the sum of the remaining weekly payments from that date to the next anniversary date. Subsequent annual payments will be made on the anniversary date.

(B) Election When Child Support Owed: Notwithstanding subsection (A) of this subsection and subsection (g) of this section, when a search of delinquent child support obligors performed pursuant to ORS 461.715 and OAR 177-010-0090 Child Support Validation Check results in a positive match with the prize winner and the Division of Child Support of the Department of Justice (DOJ) or its successor initiates garnishment proceedings, the winner of the Win for LifeSM top prize of \$1,000 per week for life has no payment options from which to select and will be placed on the annual payment schedule as described in subsection (7)(b)(B) of this section. This placement on the annual payment schedule is irrevocable.

(C) Conversion to Annual Payment Schedule upon Garnishment from Department of Justice: Upon receipt of garnishment proceedings from DOJ directed to the Lottery for monies due or to become due to a winner receiving weekly payments under the Win for LifeSM top prize, the Lottery will place that winner on the annual payment schedule as described in subsection (7)(b)(B) of this section. Conversion of the winner's payment schedule from weekly to annual under this section of the rule is irrevocable. The Lottery shall make payments to such a winner as follows:

(i) Payment Less Garnishment Amounts: Within a reasonable time after the disposition of the garnishment proceeding, the Lottery shall pay the winner the sum of the winner's weekly payments from the date the Lottery placed the winner's payments on hold to the winner's next anniversary date less any amounts withheld pursuant to the garnishment proceedings and applicable tax laws.

(ii) Subsequent Payments: The Lottery shall make any subsequent annual payments, less any amounts withheld pursuant to the garnishment proceedings and applicable tax laws, on the anniversary date of the validation of the prize.

(g) Limitation on Prize Amount for Multiple Top Prize Winning Tickets: Where there are more than three winning tickets in a single Win for

LifeSM drawing, the maximum combined annual top prize payout for a single Win for LifeSM drawing is \$156,000.

(A) More Than Three Winning Tickets: Notwithstanding the \$1,000 per week amount referred to in this rule, if there are more than three winning tickets of a Win for LifeSM top prize of \$1,000 per week for life in a single drawing, the annual top prize payment per winning ticket shall be limited to \$156,000 divided by the number of individual winning tickets for the Win for LifeSM top prize in that drawing.

(B) Example: For example, if there are four Win for LifeSM top prize winning tickets in a single drawing, the annual top prize amount is calculated by dividing 4 into \$156,000 which equals \$39,000 as the annual prize payment amount per each winning ticket.

(C) Payment: Notwithstanding subsection (f) of this section, the prize winner will be paid on an annual prize payment schedule. This placement on the annual payment schedule is irrevocable.

(D) Effect of Subsequent Events: Subsequent events, including, but not limited to, the death of one of the prize winners, shall not alter the other winners' original pro rata share of the calculated prize amount.

(h) Initiation of Payment: Prize payment is initiated upon validation of the winning ticket.

(i) Electronic Fund Transfer: After the initial prize payment issued to a Win for LifeSM top prizewinner, the Lottery shall pay both weekly and annualized Win for LifeSM prize installments via electronic funds transfer in the usual course of Lottery business.

(j) Annual Affidavit Required:

(A) General: Once each year and no earlier than thirty days prior to the anniversary of the original validation date, a winner of a Win for LifeSM top prize of \$1,000 per week for life shall provide the Lottery with an affidavit on a form provided by the Lottery, signed by the winner, bearing the seal of a notary public, verifying the winner is living, containing the winner's current address, and a bank account number to which the prize shall be paid.

(B) Termination of Prize: If a winner of a Win for LifeSM prize of \$1,000 per week for life does not provide the Lottery with the affidavit described in subsection (i)(A) of this section, then the Lottery shall not make further prize payments to the winner. If the failure of a winner to provide the affidavit continues to the next anniversary of the validation date, the remainder of the prize shall be terminated.

(C) Exception: Notwithstanding paragraph (B) of this subsection, when it is reasonable and prudent to do so based on the facts underlying a winner's failure to provide an annual affidavit, the Director may authorize prize payment even though an affidavit has not been provided or is not timely provided. No interest shall be paid by the Lottery on the value of the prize during the period a prize remained unclaimed.

(k) Death During a Payment Year: If a winner of a Win for LifeSM prize of \$1,000 per week for life dies after five years have elapsed from the date of validation and if a sequence of weekly prize payments are paid over the course of the year in which the prize winner dies or if a single annual prize payment has been paid prospectively to the winning player for that year, the prize could be overpaid. It is the policy of the Lottery that the difference between the prize that should have been paid based on the date of the death of the prize winner relative to the anniversary date of validation of the prize and the prize amount that was actually paid during the year in which the winner died will not be subject to reimbursement by the Lottery. Any prize payment paid after the year in which the winner dies relative to the anniversary date of validation of the prize shall be subject to reimbursement to the Lottery.

(l) Non-Assignability: A Win for LifeSM top prize of \$1,000 per week for life is based on the unknown duration of the life of the prizewinner and is therefore a prize of unspecified value and uncertain periodicity. Consequently, a Win for LifeSM top prize of \$1,000 per week for life is not a future periodic prize payment as described in ORS 461.253(1) and cannot be assigned, gifted, sold, or transferred in any manner from the winner to another person or entity except under the circumstances as described in subsection (d) of this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 1-2001(Temp), f. & cert. ef. 1-22-01 thru 7-21-01; LOTT 7-2001, f. 4-25-01, cert. ef. 4-26-01; LOTT 8-2002(Temp), f. & cert. ef. 7-15-02 thru 1-3-03; LOTT 20-2002, f. & cert. ef. 9-30-02; LOTT 11-2010, f. 11-19-10, cert. ef. 12-1-10; LOTT 4-2012(Temp), f. & cert. ef. 6-29-12 thru 12-21-12

177-094-0085

Retailer Selling Bonus

(1) General: For the purposes of OAR 177-040-0025(2)(a), a retailer who sells any winning and validated Win for LifeSM top prize of \$1,000 per

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week for life shall receive a bonus of \$13,000 which is based on one percent (1%) of an estimated prize value of \$52,000 per year paid over a period of 25 years ($\$52,000 \times 25 = \$1,300,000 \times .01 = \$13,000$).

(2) Multiple Top Prize Winning Tickets: Notwithstanding section (1) of this rule, if the Win for LifeSM top prize of \$1,000 per week for life is reduced in accordance with OAR 177-094-0080(7)(g), the selling retailer shall receive a bonus based on one percent of the actual prize amount paid over a period of 25 years for a validated winning ticket sold by the retailer.

For example, if the prize value paid is \$31,200 per year, the bonus shall be $\$31,200 \times 25 = \$78,000 \times .01 = \$7,800$.
Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461
Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02; LOTT 4-2012(Temp), f. & cert. ef. 6-29-12 thru 12-21-12

Oregon University System
Chapter 580

Rule Caption: Nonresident tuition differential to domestic nonresident students attending EOU

Adm. Order No.: OUS 5-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Amended: 580-010-0081

Subject: Due to the economic challenges associated with declining levels of state support, in academic year 2011-12, EOU began to charge international students a higher level of tuition than was paid by resident and domestic nonresident students. Starting in 2012-13, EOU requests charging a nonresident tuition differential to all domestic nonresident students who either were not previously enrolled or continue to be enrolled at EOU, or who are from states other than Washington, Idaho, or Oregon.

Rules Coordinator: Marcia M. Stuart—(541)-346-5749

580-010-0081

Waiver of Nonresident Instruction Fee

(1) Notwithstanding the provisions of OAR 580-010-0080, the following nonresident students shall be permitted to pay instruction fees at the same rates as Oregon resident students:

(a) Students who are residents of the State of Washington attending an Oregon institution and who are granted a tuition waiver under the terms of reciprocity agreement;

(b) Eastern Oregon University students who:

(i) graduated from a state-recognized high school in Oregon, Washington, or Idaho within the previous three year period; or

(ii) are lawful residents of Idaho or Washington; or

(iii) were enrolled in an institution of higher education in Idaho or Washington at any time during the preceding academic year; or

(iv) were enrolled students at Eastern Oregon University during the academic year 2011-12, so long as they continue to make satisfactory academic progress toward graduation without a break in enrollment (excluding summer term);

(c) Graduate students who are residents of a participating WICHE state enrolled in a WICHE Regional Graduate Program or a WICHE northwest doctoral student exchange program at a Department institution; and

(d) Students attending Oregon graduate or professional schools under terms of the WICHE Compact.

(2) When provisions of this rule are limited to residents of specific states or counties, determination of residence in those states or counties shall be made in the same manner as for students claiming Oregon residence.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: HEB 7-1979, f. & ef. 8-22-79; HEB 6-1981(Temp), f. & ef. 8-20-81; HEB 10-1981, f. & ef. 9-30-81; HEB 7-1984(Temp), f. & ef. 8-21-84; HEB 8-1984, f. & ef. 8-21-84; HEB 10-1984, f. & ef. 10-12-84; Renumbered from 580-010-0021; HEB 4-1985, f. & ef. 7-30-85; HEB 10-1985, f. & ef. 12-19-85; HEB 11-1986, f. & ef. 7-30-86; OUS 5-2012, f. & cert. ef. 6-18-12

Rule Caption: To establish student involvement in development of proposed resident undergraduate tuition rates

Adm. Order No.: OUS 6-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Adopted: 580-010-0089

Subject: During each fall term, the university president, or designee, will develop a process (or affirm a previously developed process) that involves students in the annual development of proposed tuition rates. This process will be communicated to the student government for discussion and input. Prior to the university president formally submitting proposed tuition rates to the Chancellor's Office and/or Board, the university president, or designee, will provide adequate opportunity for student government to consider and discuss the proposed rates as well provide feedback. Discussion of the university process for student involvement and student feedback on both the process and the proposed rates for undergraduate resident tuition will be included with tuition rate proposals formally submitted to the Chancellor's Office and/or Board.

Rules Coordinator: Marcia M. Stuart—(541)-346-5749

580-010-0089

Student Involvement in Development of Proposed Resident Undergraduate Tuition Rates

(1) The Board shall establish the tuition and fees to be assessed at each institution in accordance with applicable statutes and upon the recommendation of the institution president and the Chancellor. This section shall not impair the entities of student government or the Board under ORS 351.070(3)(d).

(2) Each institution will establish a process for student participation in the development of recommended rates for resident undergraduate tuition. The planned process will be communicated to the duly elected student government for discussion and input.

(3) Prior to the formal submission of proposed tuition rates to the Chancellor, or designee, the institution president, or designee, will provide an opportunity for the duly elected student government to consider and comment on the proposed rates. Efforts shall be made by both the appropriate student representatives and members of the university administration to accomplish this exchange in a timely manner that 1) provides for adequate student consideration and takes into account the academic calendar and 2) allows institutions to meet necessary deadlines for submission of proposals.

(4) As part of formally submitting rate proposals to the Chancellor, or designee, the institution president (or designee) will convey: 1) the process used by that institution to involve students in the development of recommended tuition rates and 2) the specific resident undergraduate tuition rates being proposed.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OUS 6-2012, f. & cert. ef. 6-18-12

Rule Caption: Housekeeping to add wording at Board member's request.

Adm. Order No.: OUS 7-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Amended: 580-020-0005

Subject: The amended rule provides the definition of faculty rank, creates consistency in titles, and constructs career ladders within titles; this amendment is at the request of the Board to include a clarification.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-020-0005

Academic Rank

(1) Academic titles shall consist of graduate and faculty ranks.

Graduate ranks are GRADUATE TEACHING ASSISTANT, GRADUATE RESEARCH ASSISTANT, and FELLOW. Faculty titles and ranks are (in alphabetical order): AFFILIATED FACULTY, CLINICAL PROFESSOR (assistant clinical professor, associate clinical professor, clinical professor) or PROFESSOR OF PRACTICE (assistant professor of practice, associate professor of practice, professor of practice), INSTRUCTOR (instructor, senior instructor I, senior instructor II), LECTURER (lecturer, senior lecturer I, senior lecturer II), LIBRARIAN (assistant librarian, associate librarian, senior librarian), RESEARCH ASSISTANT (research assistant, senior research assistant I, senior research assistant II), RESEARCH

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ASSOCIATE (research associate, senior research associate I, senior research associate II), RESEARCH FACULTY (research assistant professor, research associate professor, research professor), TENURE TRACK OR TENURED FACULTY (assistant professor, associate professor, professor, distinguished professor). Faculty titles will not be given to graduate students.

(2) Each institution can select from among these ranks and titles those appropriate to the hiring and retention of their faculty members as it relates to their institutional mission.

(3) The following definitions shall govern the use of faculty titles and rank:

(a) **AFFILIATED FACULTY:** A NTTF (Non-Tenure Track Faculty) appointment for individuals who do not receive monetary compensation by the institution for which services are rendered. They can be unpaid invited guests for a temporary length of time or individuals who on a consistent basis lend their expertise and/or collaborate on teaching and research. Affiliate status is approved for a specified length of time and must be renewed should the association continue. Associated ranks are at the discretion of the institution.

(b) **CLINICAL FACULTY OR PROFESSOR OF PRACTICES:** A NTTF (Non-Tenure Track Faculty) appointment for individuals with primary duties in the area of clinical instruction or professionally related community education/service. Clinical faculty or professor of practice members are licensed or certified professionals, or individuals in professional fields. The major responsibility involves the education of students/learners in academic and clinical settings, supervising clinical experiences, and/or engaging in professionally related community service. Scholarly activity may or may not be required. Ranks in this category in ascending order are assistant clinical professor, associate clinical professor, and clinical professor; or assistant professor of practice, associate professor of practice, and professor of practice.

(c) **INSTRUCTOR:** A NTTF (Non-Tenure Track Faculty) appointment for individuals with unclassified instructional appointments whose functions are devoted exclusively or primarily to undergraduate instruction. Such appointments include advising and mentoring expectations congruent with creative and engaged undergraduate instruction, including the possibility of involvement in design and development of courses and the curriculum. Ranks in this category in ascending order are instructor, senior instructor I, senior instructor II.

(d) **LECTURER:** A NTTF (Non-Tenure Track Faculty) appointment for individuals with unclassified instructional appointments whose functions may include significant responsibilities for graduate level instruction. The appointment may also include upper division undergraduate instruction. Such appointments must include significant mentoring and advising responsibilities and a significant measure of responsibility for graduate education. Appointments in the lecturer series will always require the terminal degree (or its professional equivalent for certain adjunct appointments), but the holding of a terminal degree in itself does not constitute an argument for appointment in the lecturer series. Ranks in this category in ascending order are lecturer, senior lecturer I, senior lecturer II.

(e) **LIBRARIAN:** A ranked appointment that depends on a terminal professional degree in librarianship (typically, a Masters in Library or Information Science) or a position-relevant terminal professional/academic degree plus appropriate experience. Such degree requirements ensure proper professional training, but also provide the flexibility to open appointments to a broader range of qualified applicants. Ranks in this category in ascending order are assistant librarian, associate librarian, and senior librarian. A university may elect to consider the librarian series to be eligible for tenure or to be tenured ranks with privileges and may also choose to use the tenure-track and tenured faculty titles.

(f) **RESEARCH ASSISTANT:** A NTTF (Non-Tenure Track Faculty) appointment for individuals who have typically earned a bachelor's or master's degree and conduct research under the direction of a tenure-related faculty member, a research associate or a research faculty. Ranks in this category in ascending order are research assistant, senior research assistant I, senior research assistant II.

(g) **RESEARCH ASSOCIATE:** A NTTF (Non-Tenure Track Faculty) appointment for individuals who have typically earned doctoral degree (or an advanced or professional degree in the field typically the terminal degree, plus appropriate experience) and conduct research independently. Ranks in this category in ascending order are research associate, senior research associate I, senior research associate II.

(h) **RESEARCH FACULTY:** A NTTF (Non-Tenure Track Faculty) appointment for individuals who are primarily engaged in research at a level normally appropriate for a professorial rank. Ranks in this category in

ascending order are research assistant professor, research associate professor, and research professor.

(i) **TENURE-TRACK AND TENURED FACULTY.** A faculty position assigned to an academic department wherein the incumbent holds academic rank and is eligible for tenure or is tenured. Ranks in this category in ascending order are assistant professor, associate professor, and professor. The rank of distinguished professor may be bestowed based on criteria established by a university.

(4) The terms "affiliate," "adjunct," "visiting," "fellow," "emeriti," or other appropriate terms may be used and/or added to academic title and/or ranks in those cases in which the institution wishes 1) to draw upon the skills of certain persons in the community or in other educational, industrial or governmental institutions for help in carrying forward teaching, research or service commitments (e.g., doctors, dentists, lawyers, psychiatrists, professors or administrators at other academic or governmental institutions, public school teachers or administrators), 2) where the appointment is planned for a limited duration, or 3) as an honorific title.

(5) Academic title can be assigned to staff members in unclassified academic service, whether the type of service is teaching, research, extension, administration or other service. Deans, vice presidents, presidents, Chancellor and vice chancellors may have the academic rank of professor as determined by each institution's criteria.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 9-1979, f. & ef. 8-22-79; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96; OUS 1-2012, f. & cert. ef. 1-12-12; OUS 7-2012, f. & cert. ef. 6-18-12

Rule Caption: Superseded all prior Academic year and Summer Session Fee Book Rules.

Adm. Order No.: OUS 8-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Amended: 580-040-0040

Rules Repealed: 580-040-0035

Subject: To establish Tuition and Fees for both Academic Year 2012-13 and Summer Session 2013 under one administrative rule. Supersedes all prior Academic Years and Summer Session Fee Book Rules. **Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

580-040-0040

Oregon University System Annual Fee Book

The document entitled "2012-13 Academic Year & 2013 Summer Session Fee Book" dated June 8, 2012, is hereby amended by reference as a permanent rule. All prior adoptions of Academic Year and Summer Session fee documents (OAR 580-040-0035) are hereby repealed except as to rights and obligations previously acquired or incurred there under.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. 6-30-81, ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-96; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-2004, f. & cert. ef. 6-15-04; OSSHE 2-2006, f. & cert. ef. 6-8-06; OSSHE 3-2007, f. & cert. ef. 6-21-07; OSSHE 6-2008(Temp), f. & cert. ef. 3-20-08 thru 9-1-08; OSSHE 8-2008, f. & cert. ef. 6-17-08; OSSHE 2-2009(Temp), f. & cert. ef. 2-20-09 thru 6-30-09; OSSHE 4-2009(Temp), f. & cert. ef. 3-13-09 thru 6-30-09; Administrative correction 7-21-09; OSSHE 5-2009(Temp), f. & cert. ef. 7-20-09 thru 1-8-10; OSSHE 6-2009(Temp), f. & cert. ef. 10-1-09 thru 1-8-10; Administrative correction 1-25-10; OUS 2-2010, f. & cert. ef. 2-11-10; OUS 3-2010, f. & cert. ef. 6-17-10; OUS 2-2011, f. & cert. ef. 6-23-11; OUS 3-2011, f. & cert. ef. 10-19-11; OUS 8-2012, f. & cert. ef. 6-18-12

Rule Caption: Delegation of Authority in matters of Real Property, Facility, and campus planning.

Adm. Order No.: OUS 9-2012

Filed with Sec. of State: 6-18-2012

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Certified to be Effective: 6-18-12
Notice Publication Date: 4-1-2012
Rules Amended: 580-060-0050

Subject: To delegate new responsibilities to the OSBHE's Finance and Administration Committee in alignment with statutory changes contained within SB 242. The State Board of Higher Education meets to conduct business only four to five times per year. The delegation of new responsibilities to the Finance & Administration Committee will allow the administrative affairs of the Chancellor's Office and campuses to run efficiently during the university system's transition from state agency to "public university system."
Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-060-0050

Transfers of Interests in Real Property

(1) Private Activity Limitations: If an Institution intends to execute any transfer of an interest in real property owned by the Board or the right to use Board real property, including a lease or license, and either (a) the term of the transfer exceeds 50 days in total or (b) the arrangement was not set at fair market value, then prior to the execution of that transfer of interest in real property, the Institution President or designee will confer with the OUS Controller's Division to determine compliance with bond restrictions.

(2) Authority to Execute Agreements: The Institution President or designee is authorized to execute documents transferring such interests for real property owned or controlled by the Board or real property for the use of the Institution if the term of the agreement and all extensions do not exceed ten years or the consideration for the transfer of an interest does not exceed \$5 million over the term of the agreement. The Chancellor or designee may approve transfers of interest if the term of the agreement and all extensions do not exceed 15 years or the consideration for the transfer of an interest does not exceed \$15 million over the term of the agreement. All other transfers of interests for real property will be approved by the Finance and Administration Committee of the Board.

(3)(a) Improvements to Board-Owned Property: The Institution President or designee will obtain prior approval of the Finance and Administration Committee of the Board for agreements permitting the construction on or renovation to Board-owned property if such improvements exceed \$5 million during the term of the agreement. To obtain approval from the Finance and Administration Committee of the Board, the Institution must specify where funding for operations and maintenance will come from.

(b) If the Institution permits construction on or renovation to Board-owned property, the Institution must approve all plans and specifications prior to the commencement of work and obtain record drawings upon termination of the agreement or completion of the work, whichever first occurs.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 4-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 9-2012, f. & cert. ef. 6-18-12

Rule Caption: Delegation of Authority in matters of OUS procurement and contracting code.

Adm. Order No.: OUS 10-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Amended: 580-061-0010, 580-061-0030

Subject: To delegate authority to execute certain transactions to the Board Finance and Administration Committee or other entities, such as the Chancellor or presidents.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-061-0010

Definitions

The following definitions will apply to chapter 580, divisions 60, 61, 62, and 63, unless the context requires otherwise:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all interested Bidders or Proposers.

(2) "Award" or "Awarding" means, as the context requires, identifying the Entity with whom the Institution intends to enter into a Contract fol-

lowing the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.

(3) "Bid" means an offer, binding on the Bidder and submitted in response to an ITB.

(4) "Bidder" means an Entity that submits a Bid in response to an ITB.

(5) "Board" means the Oregon State Board of Higher Education or its Finance and Administration Committee.

(6) "Change Order" or "Contract Amendment" means a written order issued by an Institution to the Contractor requiring a change in the Work within the general scope of the original Contract.

(7) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.

(8) "Competitive Process" means the process of procuring goods and services and construction-related services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that Contracts are award equitably and economically using various factors in determining such equitability and economy.

(9) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by an Institution of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include grants. "Contract" may also mean a purchase order, Price Agreement, or other Contract document in addition to an Institution's Solicitation Document and the accepted portions of a Bid or Proposal.

(10) "Contract Officer" means the Vice President for Finance and Administration or his or her designee at an Institution or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.

(11) "Contract Price" means, as the context requires, the maximum monetary obligation that an Institution either will or may incur under a Contract, including bonuses, incentives and contingency amounts, Addenda, Change Orders, or approved alternates, if the Contractor fully performs under the Contract.

(12) "Contractor" means the Entity awarded a Contract to furnish an Institution goods, services, or Work.

(13) "Days" means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

(14) "Disadvantaged Business Enterprise" means a small business concern as defined in ORS 200.005.

(15) "Disqualification or Disqualify" means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.

(16) "Electronic Bid or Proposal" means a response to a Solicitation Document submitted to an Institution via the World Wide Web or some other internet protocol.

(17) "Emergency" means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.

(18) "Emerging Small Business" means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(19) "Entity" means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(20) "Facsimile" means a document that has been transmitted to and received by an Institution in a format that is capable of being received via a device commonly known as a facsimile machine.

(21) "Grant" means:

(a) An agreement under which an Institution receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Institution and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Institution provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, commodi-

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ties, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Institution is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) "Grant" does not include a Public Improvement Contract or a Contract for Emergency work.

(22) "Institution" or "Institutional" means a university under the authority of the Board, including the Chancellor's Office.

(23) "Invitation to Bid" (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.

(24) "Minority Business Enterprise" means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(25) "Opening" means the date, time, and place specified in the Solicitation Document for the public opening of written sealed Bids or Proposals.

(26) "Owner" means the State of Oregon acting by and through the Board, in its own right or on behalf of one of its Institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).

(27) "President" means the president of one of the Institutions and, in the case of the Chancellor's Office, the Chancellor. Where the term "Institution President" is used, it refers to the president of the Institution at issue.

(28) "Personal or Professional Services" means a Contract with an Entity whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). "Personal or Professional Services" under this definition does not include an architect, engineer, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.

(29) "Price Agreement" means a nonexclusive agreement in which the Contractor agrees to provide specific items or services to an Institution at a set price during a specified period of time.

(30) "Proposal" means a binding competitive offer submitted in response to a Request for Proposals.

(31) "Proposer" means an Entity that submits a Proposal in response to a Request for Proposals.

(32) "Public Improvement" means a project for construction, reconstruction, or major renovation on real property by or for an Institution. "Public Improvement" does not include:

(a) Projects for which no funds of an Institution are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(33) "Public Improvement Contract" means a Contract for a Public Improvement. "Public Improvement Contract" does not include a Contract for Emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(34) "Public Work" is defined by the Bureau of Labor and Industries (BOLI) in ORS 279C.800(6).

(35) "Qualified Rehabilitation Facility" means a nonprofit activity center or rehabilitation facility authorized by the Oregon Department of Administrative Services to provide goods or services in accordance with ORS 279.835 et seq.

(36) "Request for Information (RFI)" means a Solicitation Document seeking information regarding products or services that an Institution is interested in procuring.

(37) "Request for Proposals (RFP)" means a Solicitation Document to obtain written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.

(38) "Request for Qualifications (RFQ)" means a Solicitation Document issued by an Institution to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services, personal services or architectural, engineering or land surveying services, or related services described in the Solicitation Document.

(39) "Responsible Bidder or Proposer" means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.

(40) "Responsive Bid or Proposal" means a Bid or Proposal that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.

(41) "Retainer Contract" means a Contract by which, pursuant to a Request for Proposals or Invitation to Bid, multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for an Institution(s). Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.

(42) "Signed or Signature" mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.

(43) "Single Seller" means the only Contractor of a particular product or service reasonably available.

(44) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Qualifications, Request for Information or any other written document issued or posted on the OUS procurement website by an Institution that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.

(45) "Specifications" means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.

(46) "Women Business Enterprise" means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(47) "Work" means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and carrying out and completion of all duties and obligations imposed by the Contract.

(48) "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or means. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12

580-061-0030

Affirmative Action; General Policy

(1) The general policy of OUS Institutions will be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses by offering them the contracting and subcontracting opportunities available through Institution Contracts. Notice of all Contracts over \$25,000 procured through a Competitive Process will be provided to the Advocate for Minority, Women, and Emerging Small Business, unless otherwise provided, by fully completing the information set out on the OUS procurement website. Institutions are encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Minority, Women, and Emerging Small Businesses and Oregon based businesses.

(2) OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.

(3) Bidders and Proposers will certify, as part of the Bids or Proposals that such Bidder or Proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

(4) On an annual basis, Institution Presidents will report to the Finance and Administration Committee of the Board statistical information regarding the number of Contracts awarded and the cumulative dollar amount of Contracts awarded to Minority Business Enterprises, Women Business Enterprises, Emerging Small Businesses, and Oregon-based businesses. The report will include information describing Institutional programs or initiatives to expand contracting opportunities to Minority, Women, Emerging Small Businesses, and Oregon based businesses.

Stat. Auth.: ORS 351

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Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12

Rule Caption: Delegation of Authority in matters of OUS purchasing and contracts for personal or professional services.

Adm. Order No.: OUS 11-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Amended: 580-062-0020

Subject: To delegate authority to execute certain transactions to the OSBHE's Finance and Administration Committee or other entities, such as the Chancellor or presidents in alignment with statutory changes contained within SB 242. The State Board of Higher Education meets to conduct business only four to five times per year. The delegation of new responsibilities to the Finance & Administration Committee will allow the administrative affairs of the Chancellor's Office and campuses to run efficiently during the university system's transition from state agency to "public university system."

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-062-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring personal or professional services or goods and services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide personal or professional services or goods and services.

(2) Informal Procurement. A Competitive Process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Entity for a Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract with any qualified Entity for services included in the scope of the Emergency. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) Retainer. Institutions may conduct a Formal Procurement to enter into Retainer Contracts with multiple Entities to provide personal or professional services or goods and services at contracted rates of compensation or based on pre-qualifications.

(6) Alternative Processes. Notwithstanding the foregoing procedures, the Institution Contract Officer may authorize alternative procurement methods that provide a Competitive Process to two or more Entities to contract with the Institution and meet the following objectives:

(a) Responds to innovative business and market methods; or

(b) Contributes to Institution productivity improvement and process redesign; or

(c) Results in comprehensive cost-effectiveness and productivity for the Institution.

(7) Exempt. Institutions need not follow, regardless of value, a Competitive Process when seeking or acquiring or paying for the following goods and services:

(a) Educational services.

(b) Advertising and media services, excluding consulting services.

(c) Price-regulated goods and services, including utilities, where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(d) Goods or services under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, Institutions may purchase the goods and services in accordance with the federal contract. In addition, Institutions may purchase specific equipment that is only available from one source or use specific Entities that are expressly required under the terms of the contract.

(e) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.

(f) Investment contracts and retirement plan services, excluding consulting services.

(g) Food and food-related products.

(h) Maintenance services directly from the contractor providing the goods.

(i) Used personal property.

(j) Goods purchased for resale to outside entities.

(k) Goods or services related to intercollegiate athletic programs.

(l) Cadavers or cadaveric organs.

(m) Hotel sites for large conferences and workshops.

(n) Dues, registrations, and membership fees.

(o) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.

(p) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(q) Repair and overhaul of goods or equipment.

(r) Goods or services purchased in foreign countries.

(s) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection.

(t) Grants, including Grant applications and proposals.

(u) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which an Institution is or may become interested.

(v) Contracts entered into, issued, or established in connection with:

(A) The incurring of debt by an Institution, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited;

(B) The making of program loans and similar extensions or advances of funds, aid, or assistance by an Institution to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by an Institution as authorized by law and other financial transactions of an Institution that by their character cannot practically be established under the Competitive Process.

(w) Contracts for employee benefit plans as authorized by law.

(x) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, and those with specific license to administer treatments for the health and well-being of people or animals.

(y) Artists, performers, photographers, graphic designers, website design, and speakers.

(z) Sponsorship agreements for Institution events or facilities.

(8) Sole Source. A process where the Institutional President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such personal or professional services or goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Each Institution will provide public notice of its determination that the person or professional services or goods or services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the personal or professional services or goods or services to be acquired from the Single Seller, identi-

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fy the prospective Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(b) An Entity may protest the Institution's determination that the personal or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Finance and Administration Committee of the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

(9) Special Entity. Institutions may enter into Contracts without using a Competitive Process when the contracting Entity is a federal, state, or local governmental agency, or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office. Institutions may participate in cooperative procurements with other contracting agencies if it is determined, in Writing, that the solicitation and award process for the Contract is reasonably equivalent to the respective process established in these rules and that the solicitation was advertised in Oregon.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 6-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 11-2012, f. & cert. ef. 6-18-12

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Rule Caption: Delegation of Authority in matters of capital construction and contracting.

Adm. Order No.: OUS 12-2012

Filed with Sec. of State: 6-18-2012

Certified to be Effective: 6-18-12

Notice Publication Date: 4-1-2012

Rules Amended: 580-063-0005, 580-063-0020

Subject: To delegate authority to execute certain transactions to the OSBHE's Finance and Administration Committee or other entities, such as the Chancellor or presidents in alignment with statutory changes contained within SB 242. The State Board of Higher Education meets to conduct business only four to five times per year. The delegation of new responsibilities to the Finance & Administration Committee will allow the administrative affairs of the Chancellor's Office and campuses to run efficiently during the university system's transition from state agency to "public university system."

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-063-0005

Authorization to Undertake Capital Construction Projects

Before an Institution contracts for Capital Construction on land owned or controlled by the Board, or prepares other than conceptual plans or preconstruction design, the Institution will obtain approval as set out in this rule, regardless of the source of funds or method by which the project is to be financed. To obtain approval, the Institution will describe the project, the financing plan for design and construction, and the operation and maintenance cost of the proposed project.

(1) If appropriate Systemwide limitation exists for a Capital Construction project that totals \$500,000 or more but less than \$5 million, inclusive of all fund sources, the Chancellor or designee may approve the allocation of the existing expenditure authority to the Institution.

(2) Any Capital Construction project that does not meet the criteria in subsection (1) of this section shall be approved by the Finance and Administration Committee of the Board and submitted to the Legislature.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 7-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 12-2012, f. & cert. ef. 6-18-12

580-063-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(2) Informal Procurement. A competitive process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, institutional website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity or Professional Consultant for services included in the scope of the Emergency declaration. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) OUS Retainer Contract Program.

(a) The OUS Capital Construction and Planning Office will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.

(A) Periodically, but no less often than every two years, the OUS Capital Construction and Planning Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.

(B) Notice of the procurement will be published on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertisement.

(b) The OUS Capital Construction and Planning Office may enter into interagency agreements to permit other public agencies to utilize the services offered by Entities that have entered into Retainer Contracts if the public agency agrees to conditions, including but not limited to:

(A) Follow the procurement processes established in these rules.

(B) Use the contract templates associated with each retainer program.

(C) Any service procured will be the sole financial responsibility of the public agency.

(D) The public agency will be solely liable to resolve all disputes that may arise from breach of contract.

(E) The OUS Capital Construction, Planning, and Budget Office may impose a reasonable administrative fee on the public agency using the Retainer Contracts based on the compensation for services procured to recover administrative costs, legal review fees, and to improve or expand retainer programs.

(c) The OUS Capital Construction, Planning, and Budget Office will maintain an electronic roster of all Professional Consultants and Contractors who have entered into Retainer Contracts. Institutions that utilize retainer programs will follow the procedures established in these rules and will only execute contracts from templates that have been approved for each respective retainer program.

(6) Sole Source. A process where the Institution President, the Chancellor or designee has made a Written determination that due to spe-

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cial needs, experience, or qualifications, only a Single Seller is reasonably available to provide certain Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Authority. Institutions may authorize sole source procurements up to \$1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to \$5,000,000 cumulative for each Institution's projects throughout a fiscal year. The Finance and Administration Committee of the Board will approve all other sole source procurements.

(b) Each Institution will provide public notice of its determination that the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services to be acquired from the Single Seller, identify the prospective Professional Consultant or Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Finance and Administration Committee of the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

(7)(a) Special Procurement.

(b) A special procurement is an exemption from competitive procedures that the Finance and Administration Committee of the Board determines is appropriate because it:

(A) Is reasonably expected to result in substantial cost savings to the Institution or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practically be realized by complying with others processes described in this rule.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 7-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 12-2012, f. & cert. ef. 6-18-12

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

Rule Caption: To modify rules for Special Student Fees.

Adm. Order No.: EOU 4-2012(Temp)

Filed with Sec. of State: 6-22-2012

Certified to be Effective: 6-22-12 thru 12-15-12

Notice Publication Date:

Rules Amended: 579-020-0006

Subject: Amend fees charted to students for special uses of facilities, services or supplies at Eastern Oregon University.

Rules Coordinator: Teresa Carson-Mastrude—(541) 962-3773

579-020-0006

Special Student Fees

Eastern Oregon University is adopting by reference Special Student Fees for the 2012-2013 school year.

[ED. NOTE: Fees referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOOSC 3, f. & ef. 6-23-76; EOOSC 8, f. & ef. 6-16-77; EOOSC 6-1978, f. & ef. 10-2-78; EOOSC 1-1979, f. & ef. 6-27-79; EOOSC 1-1981, f. & ef. 1-12-81; EOOSC 3-1981, f. & ef. 7-1-81; EOOSC 2-1983, f. & ef. 12-16-83; EOOSC 2-1984, f. & ef. 10-25-84; EOOSC 1-1986, f. & ef. 2-13-86; EOOSC 2-1988, f. & cert. ef. 10-28-88; EOOSC 2-1989, f. & cert. ef. 7-31-89; EOOSC 2-1990, f. & cert. ef. 10-9-90; EOOSC 3-1991, f. & cert. ef. 9-20-91; EOOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOOSC 1-1992, f. & cert. ef. 5-13-92; EOOSC 2-1992, f. & cert. ef. 8-24-92; EOOSC 4-1993, f. & cert. ef. 8-2-93; EOOSC 4-1994, f. & cert. ef. 7-25-94; EOOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07; EOU 4-2007(Temp), f. & cert. ef. 8-15-07 thru 1-15-08; Administrative Correction 1-24-08; EOU 1-2008, f. & cert. ef. 3-14-08; EOU 5-2008, f. & cert. ef. 8-15-08; EOU 1-2009, f. & cert. ef. 3-12-09; EOU 2-2009, f. & cert. ef. 8-14-09; EOU 3-2009, f. & cert. ef. 12-15-09; EOU 1-2010, f. & cert. ef. 5-13-10; EOU 2-2010, f. & cert. ef. 7-15-10; EOU 1-2011, f. & cert. ef. 6-6-11; EOU 3-2011, f. & cert. ef. 8-5-11; EOU 4-2011(Temp), f. & cert. ef. 11-14-11 thru 5-6-12; EOU 5-2011(Temp), f. & cert. ef. 12-1-11 thru 5-6-12; EOU 1-2012, f. & cert. ef. 4-23-12; EOU 4-2012(Temp), f. & cert. ef. 6-22-12 thru 12-15-12

Oregon University System, Oregon Institute of Technology Chapter 578

Rule Caption: To amend the Schedule of Special Institutional Fees and Charges.

Adm. Order No.: OIT 1-2012

Filed with Sec. of State: 7-11-2012

Certified to be Effective: 7-11-12

Notice Publication Date: 4-1-2012

Rules Amended: 578-041-0030, 578-072-0030

Subject: 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions, or deletions of special course fees, and general service fees for fiscal year 2012-2013. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Affairs Office.

578-072-0030 Amends the Parking Permit and Fees. Amendments allow for increases, revisions, additions, or deletions of parking permit fees for fiscal year 2012-2013. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Affairs Office.

Rules Coordinator: Leticia Hill—(541) 885-1133

578-041-0030

Special Institution Fees and Charges

The Schedule of special Institution Fees and Charges establishes charges for selected courses and general services for Oregon Institute of Technology for the academic year 2012-2013 and are hereby adopted by reference.

NOTE: Copies of this fee schedule may be obtained from the Oregon Institute of Technology Business Affairs Office.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070(2)

Hist.: OIT 1-1985, f. 1-10-85, ef. 2-1-85; OIT 1-1986, f. & ef. 9-4-86; OIT 4-1991, f. & cert. ef. 7-22-91; OIT 5-1992, f. & cert. ef. 9-24-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1995, f. & cert. ef. 7-7-95; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 2-1996, f. & cert. ef. 12-19-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 1-2003, f. & cert. ef. 6-11-03; OIT 1-2004, f. & cert. ef. 6-9-04; OIT 1-2005, f. & cert. ef. 6-10-05; OIT 1-2006, f. & cert. ef. 6-2-06; OIT 1-2007, f. & cert. ef. 6-7-07; OIT 1-2008, f. & cert. ef. 6-10-08; OIT 1-2009, f. & cert. ef. 9-2-09; OIT 1-2010(Temp), f. & cert. ef. 6-28-10 thru 12-23-10; OIT 2-2010, f. & cert. ef. 8-30-10; OIT 1-2011, f. & cert. ef. 6-20-11; OIT 4-2011, f. & cert. ef. 8-16-11; OIT 1-2012, f. & cert. ef. 7-11-12

578-072-0030

Parking Permit and Fees

(1) Faculty and Staff permits (adhesive or hanging) will be issued for a fee of \$130.00 per year or \$65.00 per term. Vehicles with these permits must park in the parking areas.

(2) Student permits (adhesive or hanging) will be issued for a fee of \$70.00 per year or \$35.00 per term. Vehicles with these permits must park in the parking areas.

(3) Bicycles must be licensed by the City of Klamath Falls. A parking permit is not required.

(4) Special permits may be issued at the Cashier's office under the following circumstances:

(a) Application for a Disabled Parking permit must be submitted to the Student Health Service. After approval by Student Health Service, a Disabled Parking permit may be purchased at the Cashier's office.

(b) Persons displaying either permanent or temporary disabled permits are authorized open parking on the campus in addition to parking in the areas designated as disabled parking.

(c) Temporary permits are issued at no charge by Campus Safety at the Information Booth on Campus Drive. Vehicles displaying temporary permits must park in the area designated by that permit. Students, faculty, and staff members are able to obtain up to 10 days per term of temporary parking permits. Temporary permits are official documents and may not be modified or altered in any way.

(d) Visitor permits are issued at no charge at the Information Booth on Campus Drive and must be displayed as indicated on the permit. A visitor is any person who is an OIT guest but is not officially affiliated with OIT.

(e) Special guest permits: Guest permits will be issued by Campus Safety.

(5) Service Vendor permits are issued by Facilities or Campus Safety for contractors, media personnel, and vendors performing work on campus.

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(6) Up to three vehicles registered on a single hanging permit-additional charge \$10.00.

(7) Replacement Permits: A replacement permit may be purchased for a substitute vehicle when the original vehicle is sold, damaged beyond repair, or when the permit is lost or damaged. In the event a permit is stolen, a stolen permit report must be filed with Campus Safety before a replacement permit may be issued. An adhesive replacement permit may be obtained for a fee of 10.00 upon submission to the cashier of permit number evidence from the original permit. Replacement hanging permits are available at full price of the original hanging permit.

(8) Possession of a lost or stolen permit may be grounds for criminal charges, and/or University disciplinary action, including revocation of parking privileges.

(9) Parking permits are issued by the academic year or for a term. Refunds will be made only if a parking permit is removed from the vehicle and returned to the Cashier within ten (10) days of the purchase date. No other refunds will be given.

(10) Parking permits are considered University records, and as such, may not be falsified, misused, forged, modified or altered in any way. Vehicles bearing forged or altered permits are subject to a fine, criminal proceeding, and/or discipline by the University.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1980, f. & ef. 6-9-80; OIT 3-1985, f. 8-5-85, ef. 9-1-85; OIT 1-1988(Temp), f. 6-20-88, cert. ef. 7-1-88; OIT 3-1991, f. & cert. ef. 7-8-91; OIT 2-1992, f. & cert. ef. 7-21-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1994, f. & cert. ef. 8-25-94; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 2-2005, f. & cert. ef. 6-10-05; OIT 2-2006, f. & cert. ef. 6-2-06; OIT 2-2007, f. & cert. ef. 6-7-07; OIT 3-2008, f. & cert. ef. 6-10-08; OIT 2-2011, f. & cert. ef. 7-25-11; OIT 3-2011, f. & cert. ef. 7-29-11; OIT 5-2011, f. & cert. ef. 8-16-11; OIT 1-2012, f. & cert. ef. 7-11-12

Oregon University System, Portland State University Chapter 577

Rule Caption: Schedule of Fines and Fees for General Services and Other Charges.

Adm. Order No.: PSU 2-2012

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 6-26-12

Notice Publication Date: 6-1-2012

Rules Amended: 577-060-0020

Subject: Portland State University hereby adopts by reference a list of fees and other charges for fiscal year 2012–2013. The list of fees and other charges is available at Portland State University's Office of Finance and Administration at <http://www.pdx.edu/fadm/rulemaking-portland-state> and is hereby incorporated by reference in the rule.

Rules Coordinator: Lorraine D. Baker—(503) 725-2656

577-060-0020

Schedule of Fines and Fees for General Services and Other Charges

The Schedule of Fines and Fees for General Services and Other Charges for the 2012-2013 Fiscal Year are hereby adopted by reference by Portland State University.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & cert. ef. 12-13-05; PSU 2-2006, f. & cert. ef. 6-30-06; PSU 5-2006(Temp), f. & cert. ef. 8-30-06 thru 1-31-07; Administrative correction, 2-16-07; PSU 3-2007, f. & cert. ef. 7-5-07; PSU 5-2008(Temp), f. 6-13-08, cert. ef. 7-1-08 thru 12-26-08; Administrative correction 1-23-09; PSU 1-

2009(Temp), f. & cert. ef. 5-14-09 thru 11-10-09; PSU 2-2009, f. 7-15-09, cert. ef. 8-1-09; PSU 6-2009(Temp), f. & cert. ef. 8-24-09 thru 11-1-09; Administrative correction 11-19-09; PSU 1-2010(Temp), f. 4-5-10, cert. ef. 7-1-10 thru 11-1-10; PSU 2-2010, f. 6-16-10, cert. ef. 8-1-10; PSU 1-2011(Temp), f. 6-10-11, cert. ef. 7-1-11 thru 12-28-11; PSU 2-2011, f. & cert. ef. 9-21-11; PSU 4-2011, f. & cert. ef. 11-10-11; PSU 2-2012, f. & cert. ef. 6-26-12

Oregon University System, University of Oregon Chapter 571

Rule Caption: Update Museum of Art titles and clarify collections and de-accessioning procedures.

Adm. Order No.: UO 4-2012

Filed with Sec. of State: 7-10-2012

Certified to be Effective: 7-11-12

Notice Publication Date: 6-1-2012

Rules Amended: 571-051-0005, 571-051-0010

Subject: These amendments update the Museum's name, committee names and University staff titles. The amendments also clarify the Museum's collections and de-accessioning procedures and align those procedures with existing museum policies.

A copy of the amendments is attached.

Rules Coordinator: Amanda Hatch—(541) 346-3082

571-051-0005

Museum Acquisition Procedure

(1) Conditions. Because the Jordan Schnitzer Museum of Art's collections are vital to its usefulness and continued excellence, all acquisitions shall meet certain conditions:

(a) They should meet at minimum the criteria of quality reflected in the best objects now in the Museum's collections;

(b) They should be relevant to the purposes and functions of the Museum, which include support for the institution's teaching and research in the visual arts as outlined in the University of Oregon Policy Statement "Jordan Schnitzer Museum of Art Mission," so as to strengthen those collections in which the Museum specializes and for which it is recognized by scholars and artists;

(c) Because the Museum must be able to provide proper storage and care of the objects accessioned into the collections, no object will be accepted which cannot be properly cared for and stored;

(d) The Museum must observe all State of Oregon, federal, and applicable international laws on acquiring imported art objects and will not, therefore, accept objects collected or acquired under questionable or illegal circumstances. The Museum endorses the 1970 UNESCO Convention on the Means of Prohibiting and Preventing Export and Transfer of Ownership of Cultural Property, and the 2003 American Association of Museums (AAM) recommended procedures regarding objects transferred in Europe during the Nazi Era, pursuant to an agreement reached in October 2000 by the AAM, the Association of Art Museum Directors and the Presidential Advisory Commission on Holocaust Assets in the United States;

(e) Title to objects shall be obtained free and clear of restrictions and qualifications of any type or manner, unless it is deemed by the University authorities (the President or the President's designees) in concurrence with the Museum Executive Director, the Museum Collections Committee, and the Curators to be in the best interests of the University. If an object is accepted under restricted conditions, notation of the restriction must be included in the object's permanent documentation.

(2) Criteria. Objects are added to the permanent collection by gift, purchase, bequest, exchange, or other transactions by which legal title passes to the Museum. Before accepting objects to the permanent collections, the Museum Collections Committee shall consider whether:

(a) The object to be accessioned is destined for a particular collection area. Objects not so destined shall be accepted only in rare circumstances, including but not limited to situations where it may be prudent and necessary to accept an entire private collection, even though some of the works may not be regarded as having Museum quality, in order to obtain desired works. The Museum Collections Committee shall make specific recommendations where entire collections are to be considered for acquisition;

(b) The object is unique or of greater aesthetic quality or value than similar ones already in the collections;

(c) Proper care can be given to the object;

(d) The object is in suitable condition for use and exhibition;

(e) The provenance of the object, as determined by the Director or appropriate Curator(s) is satisfactory;

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(f) The object is encumbered with conditions imposed by the donor regarding use or future disposition. As a rule, only unrestricted objects should be accepted;

(g) The use of the object is restricted or encumbered by intellectual property rights (copyright, patent, trademark, or trade secret) or by its nature (obscene, defamatory, potentially an invasion of privacy, physically hazardous);

(h) The object is generally consistent with the goals of the Museum.

(3) Appraisals and Donor Tax Deductions. Gifts to the Museum are tax deductible as a charitable donation based on the fair market value of the gift evidenced and substantiated in a manner acceptable under federal Internal Revenue Service regulations:

(a) Staff members of the Museum shall not provide appraisals for donated objects;

(b) Neither the Museum, the University of Oregon, nor the State of Oregon is responsible for the authenticity and accuracy of the appraisal.

(4) Museum Collections Committee. The Museum Collections Committee is an advisory committee to the Executive Director composed of members of the Museum's Leadership Council, University faculty, and others whose expertise in art and the art world is beneficial to the Museum, in addition to its permanent and ex officio members;

(a) The permanent, ex officio members of the committee are the Museum Executive Director, Curators, and Collections Manager;

(b) The other members of the committee are appointed for three-year terms by the President of the Museum's Leadership Council in consultation with and with the approval of the Museum Collections Committee chair, the Curators, and the Executive Director. The terms of office for these appointees shall be staggered to provide for committee continuity;

(c) The committee chairperson shall be selected by the President of the Museum's Leadership Council, and shall hold this position for a two-year term;

(d) If for any reason (other than the expiration of a member's term of office) an appointed position on the committee becomes vacant, the vacancy shall be filled in the same manner as original appointments. The replacement member shall serve for the unexpired portion of the vacating member's term.

(5) Meetings of the Collections Committee shall be called by the Chairperson of the Committee in consultation with the Executive Director two to four times annually, or more frequently, if so needed. The following procedures shall be followed:

(a) For each object under consideration for acquisition, the Director or Curator shall present to the Collections Committee the documentation and provenance of the object and explain its contribution to the collection as a whole;

(b) If possible, each object under consideration by the Executive Director should be physically present for evaluation by members of the committee. If the chairperson determines that this is not possible, adequate images of the object shall be presented to the committee;

(c) Minutes of all Collections Committee meetings shall be taken and maintained;

(d) The Collections Committee may suggest and recommend to the Executive Director for purchase work deemed desirable for the collection when funds are available.

(6) The Executive Director shall make all decisions with reference to acquisitions.

(7) The Executive Director shall notify donor(s) of acceptance or rejection of objects.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 351.060

Hist: UOO 1-1985, f. & cert. ef. 4-9-85; UO 4-2012, f. 7-10-12, cert. ef. 7-11-12

571-051-0010

Museum De-Accessioning Procedure

(1) Criteria. Permanent removal of objects from the collections will be done in a legal and ethical manner. The manner of disposition chosen will represent the best interests of the Museum, and the University of Oregon. An object in the Museum of Art collection can be considered for de-accessioning only if it meets at least one or more of the following criteria:

(a) It has physically or organically deteriorated beyond repair as determined by a reputable conservator; or

(b) It requires conservation, the cost of which would exceed the Museum's funds or the Museum's ability to raise the necessary monies; or

(c) It cannot be either properly stored or properly exhibited by the Museum; or

(d) It is, in the opinion of qualified outside experts, of markedly inferior quality and/or there is a duplicate or superior example of the same kind and type already in the collection; or

(e) It no longer has study, research or exhibition value; or

(f) It no longer supports the mission of the Museum; or

(g) It is determined that the work is stolen or fake; or

(h) To comply with the November 1990 Native American Graves Protection and Repatriation Act (NAGPRA) or the 2003 AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era; or

(i) Object material is potentially hazardous to human health or to other objects.

(2) Procedure. Removal of object(s) from the Museum's permanent collections can be recommended only by the Executive Director, the Curator(s), the Collections Manager, or a conservator:

(a) After such a de-accession recommendation is made, a de-accession worksheet for each object shall be begun and placed in the documentation file;

(b) A thorough search shall be made by the Museum Collections Manager of records and related University archival files to determine legal ownership as well as restrictions imposed by the donor and accepted by the Museum at the time of accessioning. Where restrictions exist as to use or disposition of the object, the Museum will observe those conditions to the extent it is reasonably possible to do so. If there are questions as to intent or force of restrictions, the Museum will seek advice of the University Office of General Counsel. New acquisitions obtained through the sale or trade of the original donated item will be credited to the donor, as a "Gift of the donor by Exchange";

(c) The qualified staff members, including the Executive Director, Curator(s), and Collections Manager, will then meet to discuss the results of this search and to propose an appropriate course of action. If all agree to recommend de-accession, the recommendation and relevant information is then presented to the Museum's Collections Committee, which shall vote on recommending the de-accession to the Executive Director. A majority vote is sufficient for such recommendation. Final authority rests with the Executive Director to determine whether de-accession should occur. The Executive Director will then inform the Senior Vice President and Provost and the Vice President of University Relations of any decisions made regarding de-accessioning. The results of any de-accession vote shall be recorded in the documentation file;

(d) Before any object can be de-accessioned and exchanged or sold from the Museum collections (whether from "permanent exhibition collections" or "study collections"), one recognized professional expert (who is neither a current nor former Museum employee), recommended by the Museum staff, shall be consulted for an opinion on the quality of the object. If the reason for the recommendation is the poor condition of the work, the expert shall be a qualified conservator in the special area of the object under consideration and should additionally offer an opinion as to the physical and economical feasibility of reconditioning the work. This expert opinion shall be submitted in writing, dated, and kept in the permanent documentation file;

(3) Disposal. Upon approval to de-accession an object, the following procedures shall be implemented:

(a) The Museum Collections Manager shall notify the University Property Control Office and provide copies of supporting documentation to remove the object(s) from the Museum collection inventory;

(b) A written, dated appraisal from a certified art appraiser (who is neither a current nor a former Museum employee) shall be sought by the Collections Manager, Curators or Executive Director to establish current market value of the object(s) to be de-accessioned;

(c) In order that objects de-accessioned from the Museum collection may continue to serve the purpose for which they were initially acquired, an effort shall be made to place them (by exchange, transfer, or sale) in another non-profit institution. To achieve this end, such objects shall be advertised in appropriate professional publications, which may be online. Such advertisement shall clearly state that neither the Jordan Schnitzer Museum of Art, the University of Oregon, nor the State of Oregon guarantees the authenticity nor the appraised value of the work. This disclaimer shall be repeated in writing at the time of sale, transfer, or exchange. Should it be deemed appropriate and useful for teaching, the de-accessioned work may be retained by the Museum for its study collection;

(d) Sales to private parties or profit-making entities shall be pursuant to state law dealing with disposition of surplus property. Whenever possible, the work of art should be sold at public auction in a city outside Eugene. In all cases, the sales should be public, although some works of art because of their nature may be more appropriately sold in the public mar-

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ketplace. De-accessioned objects shall not be given or sold to any Museum staff member or University of Oregon official whose responsibility includes Museum operations, funding, or administration, nor to their representatives or immediate families. Members of the Museum's Leadership Council and its Collections Committee also may not acquire any de-accessioned item nor may their representatives or immediate families. Proceeds from sales are to be earmarked for the acquisition of objects that will improve the Museum's collection;

(e) Exchanges of de-accessioned objects shall be for object(s) of equal or greater value to the Museum and these transactions shall be made in accordance with the procedures of the Museum's De-accession procedures;

(f) Any transactions involving a combination of object(s) and monies (given or received) shall be negotiated at the discretion of the Executive Director after consultation with the Collections Committee;

(g) Copies of records for de-accessioned objects, including provenance, research, and data on publication, and a statement authorizing removal from the Museum collection (signed by the Executive Director and the appropriate University administrators) and any other necessary documentation will be forwarded to the acquiring institution (or individual) at the time of the exchange of ownership;

(h) Documentation shall be kept in donor files, showing disposition of object(s). Where feasible, the exhibition label on object(s) acquired through exchange of a donation, or with funds derived from the sale of a donation, shall credit the donor of the exchanged or sold gift. Original records for de-accessioned objects will remain on permanent file in the Museum Collections office, with the de-accession work sheet showing completion of all steps in the de-accession process, including record of means of disposal, new ownership, and the original document showing Museum and University approval of the de-accessioning and the Executive Director's authorization. Cross-references will be placed in catalog card files;

(i) The Museum Collections Manager shall initiate procedures to remove de-accessioned objects from the computer inventory records.

Stat. Auth.: ORS 351 & 352
Stats. Implemented: ORS 351.060
Hist: UOO 1-1985, f. & cert. ef. 4-9-85; UO 4-2012, f. 7-10-12, cert. ef. 7-11-12

Oregon Youth Authority
Chapter 416

Rule Caption: Proposed changes update a rule definition and reference to current Interstate Compact for Juveniles rules.

Adm. Order No.: OYA 5-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 6-1-2012

Rules Amended: 416-115-0010, 416-115-0025, 416-115-0030

Subject: The proposed rule changes correctly define the role of the Deputy Juvenile Compact Administrator. The proposed changes also update a reference to the current Interstate Compact for Juveniles rules published by the Interstate Commission for Juveniles on March 1, 2012.

Rules Coordinator: Winifred Skinner—(503) 373-7570

416-115-0010

Definitions

(1) Absconder: A juvenile on probation or parole who hides, conceals, or absents him/herself with the intent to avoid legal process or authorized control.

(2) Adjudicated Delinquent: A person found to have committed an offense that, if committed by an adult, would be a criminal offense.

(3) Deputy Juvenile Compact Administrator: An Oregon Youth Authority employee appointed by the Director of the Oregon Youth Authority to serve as the general coordinator of activities and rule and policy development to carry out the terms and provisions of the ICJ.

(4) Escapee: A Juvenile who has made an unauthorized flight from a facility or agency's custody to which the Juvenile has been committed by the court.

(5) Home State: The state where the parent(s), guardian(s), person, or agency having legal custody of the juvenile is residing or undertakes to reside.

(6) Interstate Compact for Juveniles (ICJ): The agreement pertaining to the legally authorized transfer of supervision and care, as well as the return of juveniles from one state to another, which has been adopted by all

member states that have enacted legislation in substantially the same language.

(7) Juvenile: Any person within the juvenile jurisdictional age limit of any court in the Home/Sending State, or any individual adjudicated delinquent within the Home/Sending state and who remains under custodial care or community supervision of the juvenile authority.

(8) Runaway: A child under the juvenile jurisdictional age limit established by the state, who has run away from his/her place of residence, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody.

(9) Sending State: A state which has sent or is in the process of sending a juvenile to another state for supervision under the provisions of the ICJ.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07; OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11; OYA 5-2012, f. & cert. ef. 6-25-12

416-115-0025

Standards for Juvenile Interstate Transfer of Supervision

The Oregon Youth Authority adopts by this reference standards for the interstate transfer of Youth Offender supervision and services set in the official ICJ rules, published by the Interstate Commission for Juveniles, as updated to reflect all amendments through March 1, 2012. The rules may be viewed at the Interstate Commission for Juveniles website at <http://juvenilecompact.org/>.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11; OYA 5-2012, f. & cert. ef. 6-25-12

416-115-0030

Administration of the Interstate Compact for Juveniles

The Oregon Youth Authority (OYA) Deputy Juvenile Compact Administrator will provide interpretation of the ICJ and coordination of all referrals or requests to:

(1) Permit out-of-state supervision of a juvenile who should be sent to another state when eligible for parole or probation;

(2) Permit out-of-state travel for an Adjudicated Delinquent;

(3) Provide for the return of Absconders and Escapees to the states they left;

(4) Provide for return of Runaways to their Home States who have not as yet been adjudged delinquent;

(5) Extradite a juvenile who has committed a serious criminal offense and fled to another state before the court took jurisdiction; and

(6) Return juveniles to Oregon when ICJ placement fails.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07; OYA 7-2011, f. 12-12-11, cert. ef. 12-14-11; OYA 5-2012, f. & cert. ef. 6-25-12

Rule Caption: The proposed changes align the rule with current agency management structure and authority.

Adm. Order No.: OYA 6-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 6-1-2012

Rules Amended: 416-500-0050

Subject: The proposed rule changes correct references to repealed OAR 416-120-0010, and an outdated agency management structure. Youth offenders in substitute care requesting travel outside of Oregon for recreational purposes may be authorized on a case-by-case basis.

Rules Coordinator: Winifred Skinner—(503) 373-7570

416-500-0050

Restrictions

(1) Persons who transport offenders must:

(a) Have a valid driver's license and insurance;

(b) Comply with the provisions of state law, including the use of seatbelts; and

(c) Be authorized by OYA to provide the transportation.

(2) Persons who operate passenger vans designed to carry 12 passengers must have successfully completed an OYA-approved training course.

(3) Offender travel for recreational purposes outside of Oregon may be authorized at the discretion of the OYA Community Services Assistant Director on a case-by-case basis. All such requests must be submitted to the

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Community Services Assistant Director for review in a manner prescribed by OYA policy.

(4) Prior authorization from the Community Services Assistant Director, or designee, is required when foster parents request that an offender participate in a family vacation activity.

(5) Offenders in substitute care placements are not permitted to participate in hunting activities. No exceptions will be made to this standard.

(6) Preventative safety measures in accordance with state law, local ordinances, and OYA rules and policies must be taken during certain recreational activities.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419C.481, 419C.558 & 420A.010

Hist.: OYA 10-2004, f. & cert. ef. 10-1-04; OYA 6-2012, f. & cert. ef. 6-25-12

Parks and Recreation Department Chapter 736

Rule Caption: Extends fee waiver to foster families certified by Oregon tribal governments and the Oregon Youth Authority.

Adm. Order No.: PRD 5-2012(Temp)

Filed with Sec. of State: 6-26-2012

Certified to be Effective: 6-26-12 thru 12-20-12

Notice Publication Date:

Rules Amended: 736-015-0006

Subject: Amends definitions section of division 15 rules to add families in homes certified by tribal governments and the Oregon Youth Authority to the list of those eligible for the foster family fee waiver.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-015-0006

Definitions

As used in this division, unless the context requires otherwise:

(1) "Adoptive Foster Families" means one or more persons who have adopted one or more foster children pursuant to ORS 418.285. At least one of the children must currently be under 18 years of age and living with the Adoptive Foster Family.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the director of the department.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(6) "Foster Families" means persons along with their foster children, who currently maintain:

(a) A Foster Home, a Relative Home for Children or a Foster Home for Children with Developmental Disabilities, as described in ORS 418.625 or 443.830;

(b) A Foster Home certified by the Oregon Youth Authority under OAR chapter 416, division 530; or

(c) A Foster Home certified by any of the nine federally-recognized tribal governments in Oregon.

(7) "In Kind Services" means a group or person who provides, at the direction of park staff, materials or services whose value to the park area equals or is greater than the normal fees.

(8) "Marketing and Promotion" generally are agency-sponsored events that are of regional or statewide significance promoting tourism or partnerships with local communities, other agencies or economic development.

(9) "Motor Vehicle" as defined in ORS 801.360 means a vehicle that is self-propelled or designed for self-propulsion. ORS 801.590 further defines "vehicle" as "any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means."

(10) "Non-Profit Entity" means a group having a 501c(3) exempt status filed with the US Department of Internal Revenue Service.

(11) "Park Area" means any state park, wayside, corridor, monument, historic, or recreation area, except portions of ocean shore recreation areas not abutting a state park or wayside, under the jurisdiction of the department.

(12) "Park Employee" means an employee of the department.

(13) "Park Facility" includes but is not limited to individual and group campsites, day use areas and shelters, cabins, yurts, tepees, camper wagons, meeting halls, lodges, pavilions, and other amenities of the department.

(14) "Park Manager" means the supervisor or designated park employee in charge of a park area.

(15) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(16) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(17) "Reduced Service Level" means a reduction in the normal level of service that a person may reasonably expect due to the department's action/inaction or park facility failure lasting longer than 24 hours.

(18) "Reservation Cancellation" means the person requests an existing reservation be ended without the creation of a new reservation.

(19) "Reservation Change" means a modification to an existing reservation by a person that changes the arrival or departure dates, a complete change to reservation dates, or changes the type of site from the original request.

(20) "Special Events" may be an activity sponsored or co-sponsored by the department, an event that provides entertainment to park visitors, or other activities that promote the mission of the department or Oregon tourism.

(21) "Split Reservation" means a stay at a park area for one person for one continuous date range that requires a mid-stay move from one site to another.

(22) "Traditional Tribal Activities" generally means traditional, spiritual, natural and cultural resource practices that would have been or which still are conducted by a federally recognized tribe or its members.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111, 390.121 & 390.124

Hist.: PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 5-2011, f. & cert. ef. 8-1-11; PRD 5-2012(Temp), f. & cert. ef. 6-26-12 thru 12-20-12

Secretary of State, Elections Division Chapter 165

Rule Caption: Amending Voters' Pamphlet Rules to Reflect Current State Law and Current Policies.

Adm. Order No.: ELECT 11-2012

Filed with Sec. of State: 6-21-2012

Certified to be Effective: 6-21-12

Notice Publication Date: 5-1-2012

Rules Adopted: 165-016-0100, 165-016-0105

Rules Amended: 165-016-0040, 165-016-0045, 165-016-0050, 165-016-0055, 165-016-0070, 165-016-0080

Subject: These rules are proposed for adoption or amendment to clarify the process for submitting candidate statements, measure arguments or statement of arguments by any political party or assembly of electors. These rules set forth the process by which statements, photos, or arguments must be filed as well as the order in which they will appear in the state voters' pamphlet, allowable formatting and provides a process for contacting statement or argument filers regarding required revisions.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-016-0040

Candidate Filing Statement

(1) The candidate's statement of required and optional information must be filed electronically using ORESTAR or on form SEL 430 Candidate's Statement for State Voters' Pamphlet.

(2) Required information must include:

(a) Occupation, meaning the nature of an individual's principal business, whether paid or unpaid;

(b) Occupational background, meaning any previous occupations;

(c) Educational background, meaning any form of training or teaching; and

(d) Prior governmental experience, meaning any previous appointed or elected position with a governmental organization, whether paid or unpaid.

(3) The individual who signs the statement shall be deemed its author, therefore responsible for its contents.

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(4) If "This Information Furnished By" is left blank, the candidate's name will be used.

(5) Candidate statements for each race will be placed in the voters' pamphlet in the same random alpha order completed under ORS 254.155.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 251.046, 251.065, 251.075, 251.085, 251.087 & 251.095.

Hist.: ELECT 28-1990(Temp), f. & cert. ef. 7-13-90; ELECT 33-1990, f. & cert. ef. 8-16-90; ELECT 9-1994, f. & cert. ef. 5-10-94; ELECT 3-1996(Temp), f. & cert. ef. 1-3-96; ELECT 15-1996, f. & cert. ef. 12-19-96; ELECT 7-1998, f. & cert. ef. 5-8-98; ELECT 3-2000, f. & cert. ef. 1-14-00; ELECT 7-2006, f. & cert. ef. 4-18-06; ELECT 11-2012, f. & cert. ef. 6-21-12

165-016-0045

Photographs

(1) If a candidate desires to provide a photograph when filing a candidate statement by paper, the candidate shall:

(a) Provide two identical 5" x 7" photographs;

(b) Identify each photograph on the back upper right hand corner with the candidate's name as it should appear on the ballot and the office for which the candidate has filed;

(c) Photographs may be filed separately from the candidate's statement and fee, but must be received in the Elections Division not later than 5 p.m. on the filing deadline day;

(d) Replacement or substitute photographs may be submitted, but must be received in the Elections Division not later than 5 p.m. on the filing deadline day:

(A) The replacement or substitute photograph must be filed using the same specifications as the original photograph;

(B) The photograph must indicate it is a replacement or substitute photograph;

(e) Electronic photos will not be accepted for candidate statements filed by paper.

(2) If a candidate desires to provide a photograph when filing a candidate statement electronically, that photo must be submitted electronically using ORESTAR. Allowable image formats include: .png, .jpg, .gif or bmp.

(a) Photographs may be filed separately from the candidate's statement, but must be received by the Elections Division not later than 5 p.m. on the filing deadline day;

(b) Replacement or substitute photographs may be submitted, but must be received by the Elections Division not later than 5 p.m. on the filing deadline day.

(3) A candidate's photograph must be:

(a) Less than four years old when it is filed; and

(b) Front-facing, showing the face, neck and shoulders only. Hands shall not be shown.

(4) It is preferred that a candidate's photograph be:

(a) Portrait-style 5" x 7" or 1.5" x 1.75" if electronic;

(b) Black and white; and

(c) Matte finish.

(5) Photographs must not:

(a) Display anything in the background (this includes, but is not limited to, backdrops, landscaping, paneling, wallpaper, signs);

(b) Show the candidate wearing clothing which indicates a profession or organization (this includes, but is not limited to, judicial robes, any type of uniform, religious clothing, hats);

(c) Display any symbols which indicate a profession, organization or belief (this includes, but is not limited to, jewelry in the shape of religious symbols, lapel pins of any organization).

(6) Photographs which do not meet the above criteria shall be cropped and airbrushed.

(7) Photographs shall not be returned to the candidate or the candidate's campaign for review before or after printing of the voters' pamphlet.

(8) Faxed photos will not be accepted. If a photo is not received by the Elections Division in accordance with (1) or (2) of this rule by 5 p.m. on the filing deadline day, the statement "No Photo Submitted" will appear next to the candidate's statement in the voters' pamphlet.

Stat. Auth.: ORS 251.055

Stats. Implemented: ORS 251.087

Hist.: ELECT 28-1990(Temp), f. & cert. ef. 7-13-90; ELECT 33-1990, f. & cert. ef. 8-16-90; ELECT 7-2006, f. & cert. ef. 4-18-06; ELECT 11-2012, f. & cert. ef. 6-21-12

165-016-0050

Arguments Filed in Support or Opposition to Ballot Measures

(1) Any individual or organization may file an argument in support of or opposition to a ballot measure. The ballot measure argument must be filed electronically using ORESTAR or on form SEL 405 Measure Argument for State Voters' Pamphlet.

(2) The individual who signs the statement shall be deemed its author, therefore responsible for its contents.

(3) Each argument submitted in favor of a measure will be assigned a number. A random number generator program will be used to assign a random order to all arguments submitted in favor of a measure. Arguments in favor of a measure will be placed in the state voters' pamphlet in the randomly generated order.

(4) Each argument submitted in opposition to a measure will be assigned a number. A random number generator program will be used to assign a random order to all arguments submitted in opposition to a measure. Arguments in opposition to a measure will be placed in the state voters' pamphlet in the randomly generated order.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 251.046 & 251.255

Hist.: ELECT 28-1990(Temp), f. & cert. ef. 7-13-90; ELECT 33-1990, f. & cert. ef. 8-16-90; ELECT 9-1994, f. & cert. ef. 5-10-94; ELECT 3-1996(Temp), f. & cert. ef. 1-3-96; ELECT 15-1996, f. & cert. ef. 12-19-96; ELECT 7-1998, f. & cert. ef. 5-8-98; ELECT 3-2000, f. & cert. ef. 1-14-00; ELECT 7-2006, f. & cert. ef. 4-18-06; ELECT 11-2012, f. & cert. ef. 6-21-12

165-016-0055

Statement of Arguments by Political Party or Assembly of Electors

(1) The managing officers of any political party or assembly of electors who have nominated candidates may file, for inclusion in the state voters' pamphlet, a statement of arguments for the success of its principles and election of its candidates on a statewide or county basis or opposing the principles and candidates of other statewide or county political parties or organizations. A statement of arguments must be filed electronically using ORESTAR or on form SEL 420 Precinct Committeeperson/ Political Party/ Assembly of Electors Statement for State Voters' Pamphlet.

(2) The individual who signs the statement shall be deemed its author, therefore responsible for its contents.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 251.046 & 251.115

Hist.: ELECT 15-1996, f. & cert. ef. 12-19-96; ELECT 7-1998, f. & cert. ef. 5-8-98; ELECT 3-2000, f. & cert. ef. 1-14-00; ELECT 7-2006, f. & cert. ef. 4-18-06; ELECT 11-2012, f. & cert. ef. 6-21-12

165-016-0070

Material to be Excluded

The Secretary of State shall reject any statement, argument or other material filed for publication in the state voters' pamphlet which violates the provisions of ORS 251.055:

(1) The Secretary of State shall notify any person submitting a statement, argument or other material of any rejection in the following manner:

(a) By telephone;

(b) By fax;

(c) By email; or

(d) If unable to contact the person by telephone, fax or email, and if voters' pamphlet timelines permit, by certified mail immediately upon determining a rejection.

(2) Notification of a rejection shall identify the portions of the statement, argument or other material which are deemed to violate the provisions of ORS 251.055 and shall include a deadline for submitting a revised statement.

(3) Any person notified by the Secretary of State of any rejection may revise the statement, argument or other material only to the extent necessary to bring the statement into conformance with state statute.

(4) Any person may submit a revised statement, argument or other material for publication in the state voters' pamphlet provided:

(a) The revised statement does not violate the provisions of ORS 251.055; and

(b) The revised statement is returned to the Secretary of State, Elections Division by the deadline specified in the Secretary of State's notification.

(5) The revised statement may be submitted by fax, email, hand-delivered or mailed.

(6) If the revised statement is made by telephone, written verification of the revision shall be mailed, emailed, submitted by fax or otherwise delivered to the Secretary of State, Elections Division, confirming the telephone revision; the revised statement must be submitted by the deadline set by the Secretary of State, Elections Division.

(7) If the Secretary of State is unable to contact any person submitting a statement, argument or other material for publication in the state voters' pamphlet to inform the person of the rejection of all or part of the statement which is in violation of ORS 251.055, or if the person fails to respond to

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the Secretary of State's notification, the Secretary of State shall reject the statement, argument or other material in its entirety.

Stat. Auth.: ORS 246.150 & 251
Stats. Implemented: ORS 251.055
Hist.: ELECT 28-1990(Temp), f. & cert. ef. 7-13-90; ELECT 33-1990, f. & cert. ef. 8-16-90; ELECT 9-1994, f. & cert. ef. 5-10-94; ELECT 7-2006, f. & cert. ef. 4-18-06

165-016-0080

Notice to Candidate of Need to Revise Statement or Portrait for State Voters' Pamphlet

(1) The Secretary of State, Elections Division shall review each candidate's statement and portrait filed for publication in the state voters' pamphlet for compliance with ORS 251.049, 251.075 and 251.085 and contact any candidate whose statement or portrait does not comply.

(2) For purposes of this rule, "contact" means speaking with any person or leaving a message on an answering device at any telephone number provided on the voters' pamphlet filing form, sending an email to the email address provided on the voters' pamphlet filing form, or receiving a fax confirmation report showing a successful transmission to the fax number provided on the voters' pamphlet filing form.

(3) If a candidate's statement or portrait does not comply with provisions of ORS 251.049, 251.075 or 251.085, the Secretary of State, Elections Division shall make up to four attempts to contact the candidate. If the candidate is contacted after fewer than four attempts, no further attempts at contact will be made.

(4) The attempts to contact the candidate will be made not later than the fifth business day after the deadline for filing candidates' statements

(5) Notification of a need for revision shall identify the reasons why the statement or portrait fails to comply with applicable statutes.

(6) A revised statement may be submitted by email, fax, hand-delivered or mailed. A revised portrait may be hand-delivered or mailed.

(7) If the statement is revised by telephone, the Secretary of State, Elections Division may require that a hard (paper) copy of the revised statement, signed by the candidate, be submitted to the Secretary of State, Elections Division, to confirm the telephone revision. The revised statement must be submitted not later than the deadline set by ORS 251.087.

Stat. Auth.: ORS 246.150 & 251.087
Stats. Implemented: ORS 251.087
Hist.: ELECT 15-1996, f. & cert. ef. 12-19-96; ELECT 7-2006, f. & cert. ef. 4-18-06; ELECT 11-2012, f. & cert. ef. 6-21-12

165-016-0100

Designating Voters' Pamphlet Filer for Statements and Arguments Filed Electronically

(1) The following statements and arguments must be filed electronically in ORESTAR for inclusion in the state Voters' Pamphlet:

(a) An argument in support of a legislative referral prepared under ORS 251.245;

(b) Statements prepared by explanatory statement committees under ORS 251.215;

(c) Statements prepared by the Legislative Counsel Committee under ORS 251.225; and

(d) Financial estimates and any additional financial statements prepared by the Financial Estimate Committee under ORS 250.127.

(2) The following statements may be filed electronically in ORESTAR for inclusion in the state Voters' Pamphlet:

(a) Statements prepared by a political party under ORS 251.115;

(b) Statements prepared by an assembly of electors under ORS 251.115; and

(c) Statements prepared by the Citizens' Initiative Review Panel under ORS 250.141.

(3) Not later than 15 days prior to any filing deadline for providing the statements or arguments listed in paragraph (1) of this rule, the committees required to file statements or arguments electronically must designate a person to file these statements and provide the Elections Division with the ORESTAR account user name, first and last name and contact information for that person.

(4) Not later than 15 days prior to any filing deadline for providing the statements listed in paragraph (2) of this rule, a political party, assembly of electors or the Citizens' Review Panel must designate a person to file these statements and provide the Elections Division with the ORESTAR account user name, first and last name, and contact information for that person, if the statements will be filed electronically.

(5) Notification of the designated electronic filer's user name must be made in writing and delivered to the Elections Division at 255 Capitol St NE, Ste 501, Salem OR 97310, faxed to (503) 373-7414 or emailed to elections.sos@state.or.us

Stat. Auth.: ORS 246.150, 251.014, 251.065, 251.075 & 251.255

Stats. Implemented: ORS 251.046, 251.049, 251.055, 251.065, 251.075, 251.085, 251.087, 251.095, 251.115, 251.255 & 251.285
Hist.: ELECT 11-2012, f. & cert. ef. 6-21-12

165-016-0105

Formatting of Voters' Pamphlet Material

(1) Formatting of voters' pamphlet text materials is limited to:

(a) Words and numbers only; charts and graphics may not be used;

(b) Numbered lists;

(c) Bulleted lists;

(d) Italics;

(e) Bold;

(f) Underline;

(g) Centered text;

(h) Left justified text;

(i) Right justified text;

(j) Block quotes;

(k) Standard font size;

(l) Standard vertical spacing between paragraphs;

(m) Plain text for candidate statement required information; and

(n) Use of table to apply two-column formatting. Table borders will not be published and cell padding will not be enforced.

(2) Text changes may be made by the Elections Division either to correct space problems or to reduce word count during the publishing process for the state voters' pamphlet.

(3) Formatted statements and measure arguments shall not be returned to filers for proofreading before or after the printing of the state voters' pamphlet.

Stat. Auth.: ORS 246.150, 251.014, 251.065, 251.075 & 251.255

Stats. Implemented: ORS 251.046, 251.049, 251.055, 251.065, 251.075, 251.085, 251.087, 251.095, 251.115, 251.255 & 251.285

Hist.: ELECT 11-2012, f. & cert. ef. 6-21-12

Veterinary Medical Examining Board Chapter 875

Rule Caption: Reestablishes Board's authority to license and regulate Certified Euthanasia Technicians (CETs).

Adm. Order No.: VMEB 1-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 4-1-2012

Rules Amended: 875-005-0005, 875-040-0000

Subject: Reestablishes Board's authority to license and regulate Certified Euthanasia Technicians (CETs).

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-005-0005

Definitions

(1) "Agency": Any animal control department, humane society, or facility which contracts with a public agency or arranges to provide animal sheltering services and is registered by the Oregon State Board of Pharmacy.

(2) "Board": The Oregon State Veterinary Medical Examining Board.

(3) "Board of Pharmacy": The Oregon State Board of Pharmacy.

(4) "Certified Euthanasia Technician or "CET": A person who is employed by or a volunteer at a humane society, animal control agency or animal holding facility (agency); and who is certified by the Board pursuant to ORS 475.190(4); and who has met the provisions of 875-040-0010 (1). Any person who was trained prior to October 15, 1983 in euthanasia methods, in the course provided by Multnomah County Animal Control and the Oregon Humane Society, and who has been subsequently certified by the Board.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 475.190, 609.405, 686.130, 686.255 & 686.510

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 1-2008, f. & cert. ef. 2-11-08; VMEB 6-2008, f. & cert. ef. 5-21-08; VMEB 7-2008, f. & cert. ef. 7-22-08; VMEB 5-2011(Temp), f. & cert. ef. 12-12-11 thru 6-9-12; Administrative correction, 6-27-12; VMEB 1-2012, f. & cert. ef. 6-25-12

875-040-0000

Certified Euthanasia Technicians (CETs)

No person not licensed as a veterinarian shall perform euthanasia or administer sodium pentobarbital unless the person is certified by the Board. CETs shall administer euthanasia in conformance with the 2010 Association of Shelter Veterinarians (SVA) Guidelines for Standards of Care in Animal Euthanasia for small animals and the 2011 American Veterinary Medical Association (AVMA) Guidelines on Euthanasia for

ADMINISTRATIVE RULES

large animals. Under ORS 609.405, lethal injection of sodium pentobarbital is the only approved method for the euthanasia of dogs and cats by an animal control agency, humane society or subcontractor thereof.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 475; 686.110, 120, 130,132, 150 & 160

Hist.: VMEB 1-2012, f. & cert. ef. 6-25-12

Rule Caption: Defines licensing eligibility requirements for Certified Euthanasia Technicians (CETs).

Adm. Order No.: VMEB 2-2012

Filed with Sec. of State: 6-25-2012

Certified to be Effective: 6-25-12

Notice Publication Date: 4-1-2012

Rules Adopted: 875-040-0010

Subject: Defines licensing eligibility requirements for Certified Euthanasia Technicians (CETs).

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-040-0010

Certification of Technicians

(1) In order for a person to become a Certified Euthanasia Technician (CET), the person must:

(a) Be an employee or a volunteer at a humane society, animal control agency or animal holding facility (agency);

(b) Complete Board-approved training;

(c) Pay an annual certification fee of \$25.00.

(2) Upon separation from an agency, a CET may not euthanize animals until the person is employed by or a volunteer at another agency, and the agency has notified the Board. Certificates are valid only for the agency at which the person is currently working.

(3) If a CET is reemployed or volunteers again within 18 months of last certification, the agency may apply to the Board for reactivation of the person's certification. After an 18-month lapse in certification, the person must become recertified as described in (1).

(4) All certifications expire on October 31st of each year.

(5) The Board may suspend, revoke or discipline a CET holder for failure to comply with any part of OAR chapter 875 or Board of Pharmacy Rules (OAR chapter 855).

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 475 & 686

Hist.: VMEB 2-2012, f. & cert. ef. 6-25-12

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111-005-0040	1-13-2012	Amend(T)	2-1-2012	111-065-0035	4-20-2012	Adopt(T)	6-1-2012
111-005-0040	4-18-2012	Amend	6-1-2012	111-065-0040	4-20-2012	Adopt(T)	6-1-2012
111-005-0040(T)	4-18-2012	Repeal	6-1-2012	111-080-0005	12-14-2011	Amend	1-1-2012
111-005-0042	1-13-2012	Amend(T)	2-1-2012	111-080-0005(T)	12-14-2011	Repeal	1-1-2012
111-005-0042	4-18-2012	Amend	6-1-2012	111-080-0030	4-20-2012	Amend(T)	6-1-2012
111-005-0042(T)	4-18-2012	Repeal	6-1-2012	115-010-0012	12-29-2011	Amend	2-1-2012
111-010-0015	12-14-2011	Amend	1-1-2012	115-035-0000	12-29-2011	Amend	2-1-2012
111-010-0015(T)	12-14-2011	Repeal	1-1-2012	115-035-0035	12-29-2011	Amend	2-1-2012
111-030-0005	4-20-2012	Amend(T)	6-1-2012	115-035-0045	12-29-2011	Amend	2-1-2012
111-030-0010	4-20-2012	Amend(T)	6-1-2012	115-040-0005	12-29-2011	Amend	2-1-2012
111-030-0047	4-20-2012	Adopt(T)	6-1-2012	115-070-0000	12-29-2011	Amend	2-1-2012
111-040-0001	12-14-2011	Amend	1-1-2012	115-070-0035	12-29-2011	Amend	2-1-2012
111-040-0001	4-20-2012	Amend(T)	6-1-2012	115-070-0050	12-29-2011	Amend	2-1-2012
111-040-0001(T)	12-14-2011	Repeal	1-1-2012	115-080-0010	12-29-2011	Amend	2-1-2012
111-040-0005	12-14-2011	Amend	1-1-2012	122-070-0000	2-1-2012	Repeal	3-1-2012
111-040-0005	4-20-2012	Amend(T)	6-1-2012	122-070-0010	2-1-2012	Repeal	3-1-2012
111-040-0005(T)	12-14-2011	Repeal	1-1-2012	122-070-0020	2-1-2012	Repeal	3-1-2012
111-040-0010	4-20-2012	Amend(T)	6-1-2012	122-070-0030	2-1-2012	Repeal	3-1-2012
111-040-0015	12-14-2011	Amend	1-1-2012	122-070-0040	2-1-2012	Repeal	3-1-2012
111-040-0015	4-20-2012	Amend(T)	6-1-2012	122-070-0050	2-1-2012	Repeal	3-1-2012
111-040-0015(T)	12-14-2011	Repeal	1-1-2012	122-070-0060	2-1-2012	Repeal	3-1-2012
111-040-0020	4-20-2012	Amend(T)	6-1-2012	122-070-0065	2-1-2012	Repeal	3-1-2012
111-040-0025	12-14-2011	Amend	1-1-2012	122-070-0070	2-1-2012	Repeal	3-1-2012
111-040-0025	4-20-2012	Amend(T)	6-1-2012	122-070-0080	2-1-2012	Repeal	3-1-2012
111-040-0025(T)	12-14-2011	Repeal	1-1-2012	122-070-0100	2-1-2012	Adopt	3-1-2012
111-040-0030	4-20-2012	Amend(T)	6-1-2012	122-070-0110	2-1-2012	Adopt	3-1-2012
111-040-0040	12-14-2011	Amend	1-1-2012	122-070-0120	2-1-2012	Adopt	3-1-2012
111-040-0040	4-20-2012	Amend(T)	6-1-2012	122-070-0130	2-1-2012	Adopt	3-1-2012
111-040-0040(T)	12-14-2011	Repeal	1-1-2012	122-070-0140	2-1-2012	Adopt	3-1-2012
111-040-0050	4-20-2012	Amend(T)	6-1-2012	122-070-0150	2-1-2012	Adopt	3-1-2012
111-050-0010	4-20-2012	Amend(T)	6-1-2012	122-070-0160	2-1-2012	Adopt	3-1-2012
111-050-0015	12-14-2011	Amend	1-1-2012	122-070-0100	2-1-2012	Adopt	3-1-2012
111-050-0015	4-20-2012	Amend(T)	6-1-2012	122-075-0110	2-1-2012	Adopt	3-1-2012
111-050-0015(T)	12-14-2011	Repeal	1-1-2012	122-075-0120	2-1-2012	Adopt	3-1-2012
111-050-0016	4-20-2012	Amend(T)	6-1-2012	122-075-0150	2-1-2012	Adopt	3-1-2012
111-050-0020	4-20-2012	Amend(T)	6-1-2012	122-075-0160	2-1-2012	Adopt	3-1-2012
111-050-0025	12-14-2011	Amend	1-1-2012	123-006-0035	4-2-2012	Amend	5-1-2012
111-050-0025	4-20-2012	Amend(T)	6-1-2012	123-011-0021	6-1-2012	Amend	7-1-2012
111-050-0025(T)	12-14-2011	Repeal	1-1-2012	123-011-0025	6-1-2012	Amend	7-1-2012
111-050-0030	12-14-2011	Amend	1-1-2012	123-011-0027	6-1-2012	Amend	7-1-2012
111-050-0030	4-20-2012	Amend(T)	6-1-2012	123-011-0030	6-1-2012	Amend	7-1-2012
111-050-0030(T)	12-14-2011	Repeal	1-1-2012	123-011-0035	12-8-2011	Amend(T)	1-1-2012
111-050-0035	4-20-2012	Amend(T)	6-1-2012	123-011-0035	6-1-2012	Amend	7-1-2012
111-050-0045	12-14-2011	Amend	1-1-2012	123-011-0035(T)	6-1-2012	Repeal	7-1-2012
111-050-0045	4-20-2012	Amend(T)	6-1-2012	123-011-0037	6-1-2012	Amend	7-1-2012
111-050-0045(T)	12-14-2011	Repeal	1-1-2012	123-011-0040	6-1-2012	Amend	7-1-2012
111-050-0050	12-14-2011	Amend	1-1-2012	123-011-0045	12-8-2011	Amend(T)	1-1-2012
111-050-0050	4-20-2012	Amend(T)	6-1-2012	123-011-0045	6-1-2012	Amend	7-1-2012
111-050-0050(T)	12-14-2011	Repeal	1-1-2012	123-011-0045(T)	6-1-2012	Repeal	7-1-2012
111-065-0001	4-20-2012	Adopt(T)	6-1-2012	123-011-0050	6-1-2012	Amend	7-1-2012
111-065-0005	4-20-2012	Adopt(T)	6-1-2012	123-017-0080	2-23-2012	Amend(T)	4-1-2012
111-065-0010	4-20-2012	Adopt(T)	6-1-2012	123-018-0010	12-19-2011	Amend(T)	2-1-2012
111-065-0015	4-20-2012	Adopt(T)	6-1-2012	123-018-0010	6-1-2012	Amend	7-1-2012
111-065-0020	4-20-2012	Adopt(T)	6-1-2012	123-018-0010(T)	6-1-2012	Repeal	7-1-2012
111-065-0025	4-20-2012	Adopt(T)	6-1-2012	123-018-0065	12-19-2011	Amend(T)	2-1-2012
111-065-0030	4-20-2012	Adopt(T)	6-1-2012	123-018-0065	6-1-2012	Amend	7-1-2012

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123-018-0140	12-19-2011	Amend(T)	2-1-2012	123-600-0250	6-1-2012	Adopt	7-1-2012
123-018-0140	6-1-2012	Amend	7-1-2012	123-630-0000	6-1-2012	Adopt	7-1-2012
123-018-0140(T)	6-1-2012	Repeal	7-1-2012	123-630-0010	6-1-2012	Adopt	7-1-2012
123-021-0000	12-8-2011	Amend(T)	1-1-2012	123-630-0020	6-1-2012	Adopt	7-1-2012
123-021-0000	6-1-2012	Amend	7-1-2012	123-630-0030	6-1-2012	Adopt	7-1-2012
123-021-0000(T)	6-1-2012	Repeal	7-1-2012	123-630-0040	6-1-2012	Adopt	7-1-2012
123-021-0010	12-8-2011	Amend(T)	1-1-2012	123-630-0050	6-1-2012	Adopt	7-1-2012
123-021-0010	6-1-2012	Amend	7-1-2012	123-630-0060	6-1-2012	Adopt	7-1-2012
123-021-0010(T)	6-1-2012	Repeal	7-1-2012	123-630-0070	6-1-2012	Adopt	7-1-2012
123-021-0015	12-8-2011	Amend(T)	1-1-2012	123-630-0080	6-1-2012	Adopt	7-1-2012
123-021-0015	6-1-2012	Amend	7-1-2012	123-630-0090	6-1-2012	Adopt	7-1-2012
123-021-0015(T)	6-1-2012	Repeal	7-1-2012	123-630-0100	6-1-2012	Adopt	7-1-2012
123-021-0020	12-8-2011	Amend(T)	1-1-2012	125-246-0100	1-1-2012	Amend	2-1-2012
123-021-0020	6-1-2012	Amend	7-1-2012	125-246-0300	1-1-2012	Amend	2-1-2012
123-021-0020(T)	6-1-2012	Repeal	7-1-2012	125-246-0570	1-1-2012	Amend	2-1-2012
123-021-0040	12-8-2011	Amend(T)	1-1-2012	125-247-0100	1-1-2012	Amend	2-1-2012
123-021-0040	6-1-2012	Amend	7-1-2012	125-247-0310	1-1-2012	Amend	2-1-2012
123-021-0040(T)	6-1-2012	Repeal	7-1-2012	125-247-0320	1-1-2012	Amend	2-1-2012
123-021-0080	12-8-2011	Amend(T)	1-1-2012	125-247-0400	1-1-2012	Amend	2-1-2012
123-021-0080	6-1-2012	Amend	7-1-2012	125-247-0410	1-1-2012	Amend	2-1-2012
123-021-0080(T)	6-1-2012	Repeal	7-1-2012	125-247-0420	1-1-2012	Amend	2-1-2012
123-021-0090	12-8-2011	Amend(T)	1-1-2012	125-247-0440	1-1-2012	Amend	2-1-2012
123-021-0090	6-1-2012	Amend	7-1-2012	125-247-0450	1-1-2012	Amend	2-1-2012
123-021-0090(T)	6-1-2012	Repeal	7-1-2012	125-247-0460	1-1-2012	Amend	2-1-2012
123-021-0110	12-8-2011	Amend(T)	1-1-2012	125-247-0470	1-1-2012	Amend	2-1-2012
123-021-0110	6-1-2012	Amend	7-1-2012	125-247-0480	1-1-2012	Amend	2-1-2012
123-021-0110(T)	6-1-2012	Repeal	7-1-2012	125-247-0490	1-1-2012	Amend	2-1-2012
123-021-0130	12-8-2011	Amend(T)	1-1-2012	125-247-0525	1-1-2012	Amend	2-1-2012
123-021-0130	6-1-2012	Amend	7-1-2012	125-247-0575	1-1-2012	Amend	2-1-2012
123-021-0130(T)	6-1-2012	Repeal	7-1-2012	125-247-0620	1-1-2012	Amend	2-1-2012
123-042-0026	1-1-2012	Amend	2-1-2012	125-247-0640	1-1-2012	Amend	2-1-2012
123-042-0045	1-1-2012	Amend	2-1-2012	125-247-0650	1-1-2012	Amend	2-1-2012
123-043-0010	4-2-2012	Amend	5-1-2012	125-247-0660	1-1-2012	Amend	2-1-2012
123-043-0010(T)	4-2-2012	Repeal	5-1-2012	125-247-0670	1-1-2012	Amend	2-1-2012
123-043-0025	4-2-2012	Amend	5-1-2012	125-247-0700	1-1-2012	Amend	2-1-2012
123-043-0025(T)	4-2-2012	Repeal	5-1-2012	125-247-0710	1-1-2012	Amend	2-1-2012
123-043-0115	4-2-2012	Amend	5-1-2012	125-247-0720	1-1-2012	Amend	2-1-2012
123-043-0115(T)	4-2-2012	Repeal	5-1-2012	125-247-0731	1-1-2012	Amend	2-1-2012
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123-475-0025	1-1-2012	Amend	2-1-2012	125-248-0210	1-1-2012	Amend	2-1-2012
123-475-0030	1-1-2012	Amend	2-1-2012	125-248-0220	1-1-2012	Amend	2-1-2012
123-600-0100	6-1-2012	Adopt	7-1-2012	125-248-0230	1-1-2012	Amend	2-1-2012
123-600-0105	6-1-2012	Adopt	7-1-2012	125-248-0240	1-1-2012	Amend	2-1-2012
123-600-0110	6-1-2012	Adopt	7-1-2012	125-248-0250	1-1-2012	Amend	2-1-2012
123-600-0120	6-1-2012	Adopt	7-1-2012	125-248-0260	1-1-2012	Amend	2-1-2012
123-600-0130	6-1-2012	Adopt	7-1-2012	125-248-0300	1-1-2012	Amend	2-1-2012
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123-600-0140	6-1-2012	Adopt	7-1-2012	125-248-0340	1-1-2012	Amend	2-1-2012

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125-249-0130	1-1-2012	Amend	2-1-2012	125-249-0910	1-1-2012	Amend	2-1-2012
125-249-0140	1-1-2012	Amend	2-1-2012	137-003-0501	1-31-2012	Amend	2-1-2012
125-249-0150	1-1-2012	Amend	2-1-2012	137-003-0505	1-31-2012	Amend	2-1-2012
125-249-0160	1-1-2012	Amend	2-1-2012	137-003-0510	1-31-2012	Amend	2-1-2012
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125-249-0270	1-1-2012	Amend	2-1-2012	137-003-0560	1-31-2012	Amend	2-1-2012
125-249-0280	1-1-2012	Amend	2-1-2012	137-003-0570	1-31-2012	Am. & Ren.	2-1-2012
125-249-0290	1-1-2012	Amend	2-1-2012	137-003-0570	1-31-2012	Am. & Ren.	2-1-2012
125-249-0300	1-1-2012	Amend	2-1-2012	137-003-0570	1-31-2012	Am. & Ren.	2-1-2012
125-249-0310	1-1-2012	Amend	2-1-2012	137-003-0570	1-31-2012	Am. & Ren.	2-1-2012
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125-249-0370	1-1-2012	Amend	2-1-2012	137-003-0635	1-31-2012	Amend	2-1-2012
125-249-0380	1-1-2012	Amend	2-1-2012	137-003-0640	1-31-2012	Amend	2-1-2012
125-249-0390	1-1-2012	Amend	2-1-2012	137-003-0645	1-31-2012	Amend	2-1-2012
125-249-0395	1-1-2012	Amend	2-1-2012	137-003-0655	1-31-2012	Amend	2-1-2012
125-249-0400	1-1-2012	Amend	2-1-2012	137-003-0665	1-31-2012	Amend	2-1-2012
125-249-0410	1-1-2012	Amend	2-1-2012	137-003-0670	1-31-2012	Amend	2-1-2012
125-249-0420	1-1-2012	Amend	2-1-2012	137-003-0672	1-31-2012	Amend	2-1-2012
125-249-0430	1-1-2012	Amend	2-1-2012	137-003-0690	1-31-2012	Amend	2-1-2012
125-249-0440	1-1-2012	Amend	2-1-2012	137-008-0010	7-1-2012	Amend	8-1-2012
125-249-0450	1-1-2012	Amend	2-1-2012	137-020-0800	1-27-2012	Adopt(T)	3-1-2012
125-249-0460	1-1-2012	Amend	2-1-2012	137-020-0800(T)	2-15-2012	Suspend	3-1-2012
125-249-0470	1-1-2012	Amend	2-1-2012	137-020-0805	2-15-2012	Adopt(T)	3-1-2012
125-249-0490	1-1-2012	Amend	2-1-2012	137-045-0030	1-1-2012	Amend	1-1-2012
125-249-0600	1-1-2012	Amend	2-1-2012	137-045-0090	1-1-2012	Amend	1-1-2012
125-249-0610	1-1-2012	Amend	2-1-2012	137-046-0110	1-1-2012	Amend	1-1-2012
125-249-0620	1-1-2012	Amend	2-1-2012	137-046-0252	8-1-2012	Adopt	8-1-2012
125-249-0640	1-1-2012	Amend	2-1-2012	137-046-0300	1-1-2012	Amend	1-1-2012
125-249-0645	1-1-2012	Amend	2-1-2012	137-046-0300	8-1-2012	Amend	8-1-2012
125-249-0650	1-1-2012	Amend	2-1-2012	137-046-0330	8-1-2012	Adopt	8-1-2012
125-249-0660	1-1-2012	Amend	2-1-2012	137-047-0257	1-1-2012	Amend	1-1-2012
125-249-0670	1-1-2012	Amend	2-1-2012	137-047-0260	1-1-2012	Amend	1-1-2012
125-249-0680	1-1-2012	Amend	2-1-2012	137-047-0261	1-1-2012	Amend	1-1-2012
125-249-0690	1-1-2012	Amend	2-1-2012	137-047-0262	1-1-2012	Repeal	1-1-2012
125-249-0800	1-1-2012	Amend	2-1-2012	137-047-0263	1-1-2012	Repeal	1-1-2012
125-249-0810	1-1-2012	Amend	2-1-2012	137-047-0270	2-27-2012	Amend	4-1-2012
125-249-0815	1-1-2012	Amend	2-1-2012	137-047-0310	1-1-2012	Amend	1-1-2012
125-249-0820	1-1-2012	Amend	2-1-2012	137-047-0430	1-1-2012	Amend	1-1-2012
125-249-0830	1-1-2012	Amend	2-1-2012	137-047-0460	1-1-2012	Amend	1-1-2012
125-249-0840	1-1-2012	Amend	2-1-2012	137-047-0560	8-1-2012	Adopt	8-1-2012
125-249-0850	1-1-2012	Amend	2-1-2012	137-047-0600	1-1-2012	Amend	1-1-2012
125-249-0860	1-1-2012	Amend	2-1-2012	137-047-0620	1-1-2012	Amend	1-1-2012
125-249-0870	1-1-2012	Amend	2-1-2012	137-047-0640	8-1-2012	Amend	8-1-2012
125-249-0880	1-1-2012	Amend	2-1-2012	137-047-0670	8-1-2012	Amend	8-1-2012
125-249-0890	1-1-2012	Amend	2-1-2012	137-047-0800	1-1-2012	Amend	1-1-2012

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137-048-0100	1-1-2012	Amend	1-1-2012	137-060-0450	2-2-2012	Amend	3-1-2012
137-048-0110	1-1-2012	Amend	1-1-2012	137-110-0001	7-11-2012	Adopt(T)	8-1-2012
137-048-0120	1-1-2012	Amend	1-1-2012	137-110-0005	7-11-2012	Adopt(T)	8-1-2012
137-048-0130	1-1-2012	Amend	1-1-2012	137-110-0010	7-11-2012	Adopt(T)	8-1-2012
137-048-0130	8-1-2012	Amend	8-1-2012	137-110-0020	7-11-2012	Adopt(T)	8-1-2012
137-048-0200	1-1-2012	Amend	1-1-2012	137-110-0110	7-11-2012	Adopt(T)	8-1-2012
137-048-0210	1-1-2012	Amend	1-1-2012	137-110-0200	7-11-2012	Adopt(T)	8-1-2012
137-048-0220	1-1-2012	Amend	1-1-2012	137-110-0210	7-11-2012	Adopt(T)	8-1-2012
137-048-0220	8-1-2012	Amend	8-1-2012	137-110-0410	7-11-2012	Adopt(T)	8-1-2012
137-048-0230	1-1-2012	Amend	1-1-2012	137-110-0420	7-11-2012	Adopt(T)	8-1-2012
137-048-0240	1-1-2012	Amend	1-1-2012	137-110-0430	7-11-2012	Adopt(T)	8-1-2012
137-048-0250	1-1-2012	Amend	1-1-2012	137-110-0500	7-11-2012	Adopt(T)	8-1-2012
137-048-0260	1-1-2012	Amend	1-1-2012	137-110-0510	7-11-2012	Adopt(T)	8-1-2012
137-048-0270	1-1-2012	Adopt	1-1-2012	137-110-0520	7-11-2012	Adopt(T)	8-1-2012
137-048-0300	1-1-2012	Amend	1-1-2012	137-110-0600	7-11-2012	Adopt(T)	8-1-2012
137-048-0310	1-1-2012	Amend	1-1-2012	137-110-0610	7-11-2012	Adopt(T)	8-1-2012
137-048-0320	1-1-2012	Amend	1-1-2012	137-110-0620	7-11-2012	Adopt(T)	8-1-2012
137-049-0380	1-1-2012	Amend	1-1-2012	137-110-0630	7-11-2012	Adopt(T)	8-1-2012
137-049-0650	1-1-2012	Amend	1-1-2012	137-110-0640	7-11-2012	Adopt(T)	8-1-2012
137-049-0860	1-1-2012	Amend	1-1-2012	137-110-0650	7-11-2012	Adopt(T)	8-1-2012
137-050-0745	7-2-2012	Amend	8-1-2012	137-110-0660	7-11-2012	Adopt(T)	8-1-2012
137-050-0750	1-3-2012	Amend	2-1-2012	137-110-0670	7-11-2012	Adopt(T)	8-1-2012
137-055-1100	1-3-2012	Amend	2-1-2012	137-120-0010	7-11-2012	Adopt(T)	8-1-2012
137-055-1140	12-5-2011	Amend(T)	1-1-2012	137-120-0020	7-11-2012	Adopt(T)	8-1-2012
137-055-1140	1-3-2012	Amend	2-1-2012	141-093-0107	4-1-2012	Amend	4-1-2012
137-055-1145	12-5-2011	Suspend	1-1-2012	141-093-0115	4-1-2012	Amend	4-1-2012
137-055-1145	1-3-2012	Repeal	2-1-2012	141-093-0135	4-1-2012	Amend	4-1-2012
137-055-1160	1-3-2012	Amend	2-1-2012	141-093-0180	4-1-2012	Adopt	4-1-2012
137-055-1800	1-3-2012	Amend	2-1-2012	141-093-0185	4-1-2012	Adopt	4-1-2012
137-055-2100	1-3-2012	Adopt	2-1-2012	141-093-0187	4-1-2012	Adopt	4-1-2012
137-055-2160	1-3-2012	Amend	2-1-2012	141-093-0190	4-1-2012	Adopt	4-1-2012
137-055-3220	1-3-2012	Amend	2-1-2012	141-093-0195	4-1-2012	Adopt	4-1-2012
137-055-3300	5-24-2012	Amend(T)	7-1-2012	141-093-0200	4-1-2012	Adopt	4-1-2012
137-055-3430	1-3-2012	Amend	2-1-2012	141-093-0205	4-1-2012	Adopt	4-1-2012
137-055-3430	5-24-2012	Amend(T)	7-1-2012	141-093-0215	4-1-2012	Adopt	4-1-2012
137-055-3640	1-3-2012	Amend	2-1-2012	141-093-0220	4-2-2012	Adopt(T)	5-1-2012
137-055-4130	1-3-2012	Amend	2-1-2012	141-093-0225	4-2-2012	Adopt(T)	5-1-2012
137-055-4440	1-3-2012	Amend	2-1-2012	141-093-0230	4-2-2012	Adopt(T)	5-1-2012
137-055-4520	1-3-2012	Amend	2-1-2012	141-093-0235	4-2-2012	Adopt(T)	5-1-2012
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137-055-5420	1-3-2012	Amend	2-1-2012	141-110-0080	12-13-2011	Amend	1-1-2012
137-055-6021	1-3-2012	Amend	2-1-2012	150-18.385	1-1-2012	Amend	2-1-2012
137-055-6100	1-3-2012	Repeal	2-1-2012	150-18.385(A)	1-1-2012	Amend	2-1-2012
137-055-6200	1-3-2012	Amend	2-1-2012	150-267.380(2)	1-1-2012	Amend	2-1-2012
137-055-6220	1-3-2012	Amend	2-1-2012	150-294.435(1)-(A)	1-1-2012	Amend	2-1-2012
137-055-6240	1-3-2012	Amend	2-1-2012	150-294.435(1)-(C)	1-1-2012	Amend	2-1-2012
137-055-6260	1-3-2012	Amend	2-1-2012	150-294.480	1-1-2012	Amend	2-1-2012
137-060-0130	2-2-2012	Amend	3-1-2012	150-294.525-(A)	1-1-2012	Amend	2-1-2012
137-060-0150	2-2-2012	Amend	3-1-2012	150-305.810	2-1-2012	Amend(T)	3-1-2012
137-060-0160	2-2-2012	Amend	3-1-2012	150-307.250(1)(c)	1-1-2012	Am. & Ren.	2-1-2012
137-060-0230	2-2-2012	Amend	3-1-2012	150-308.290(4)(b)	1-1-2012	Am. & Ren.	2-1-2012
137-060-0250	2-2-2012	Amend	3-1-2012	150-308.505(3)	2-1-2012	Adopt(T)	3-1-2012
137-060-0330	2-2-2012	Amend	3-1-2012	150-311.216	1-1-2012	Amend	2-1-2012
137-060-0350	2-2-2012	Amend	3-1-2012	150-314.280-(F)	1-1-2012	Amend	2-1-2012
137-060-0360	2-2-2012	Amend	3-1-2012	150-314.360	1-1-2012	Amend	2-1-2012

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150-314.HB2071(B)	1-1-2012	Adopt	2-1-2012	161-520-0050	7-3-2012	Adopt	8-1-2012
150-315.326	1-1-2012	Adopt	2-1-2012	161-520-0055	7-3-2012	Adopt	8-1-2012
150-315.354	1-1-2012	Repeal	2-1-2012	161-520-0060	7-3-2012	Adopt	8-1-2012
150-315.514	6-1-2012	Amend(T)	7-1-2012	161-530-0010	1-1-2012	Adopt(T)	2-1-2012
150-315.HB 3672	11-29-2011	Adopt(T)	1-1-2012	161-530-0010	7-3-2012	Adopt	8-1-2012
150-315.HB 3672(T)	11-29-2011	Suspend	1-1-2012	161-530-0020	1-1-2012	Adopt(T)	2-1-2012
150-315.HB3672	1-1-2012	Suspend	2-1-2012	161-530-0020	7-3-2012	Adopt	8-1-2012
150-317.710(5)(b)	1-1-2012	Amend	2-1-2012	161-530-0030	1-1-2012	Adopt(T)	2-1-2012
160-010-0030	3-1-2012	Adopt	4-1-2012	161-530-0030	7-3-2012	Adopt	8-1-2012
160-010-0050	6-1-2012	Adopt	7-1-2012	161-530-0040	1-1-2012	Adopt(T)	2-1-2012
160-010-0310	3-1-2012	Amend	4-1-2012	161-530-0040	7-3-2012	Adopt	8-1-2012
160-010-0400	3-1-2012	Amend	4-1-2012	161-540-0010	1-1-2012	Adopt(T)	2-1-2012
160-010-0450	3-1-2012	Adopt	4-1-2012	161-540-0010	7-3-2012	Adopt	8-1-2012
160-050-0115	3-1-2012	Adopt	4-1-2012	161-550-0010	1-1-2012	Adopt(T)	2-1-2012
160-050-0140	6-1-2012	Amend	7-1-2012	161-550-0010	7-3-2012	Adopt	8-1-2012
160-050-0200	3-1-2012	Amend	4-1-2012	161-550-0020	7-3-2012	Adopt	8-1-2012
160-050-0210	3-1-2012	Amend	4-1-2012	161-560-0010	1-1-2012	Adopt(T)	2-1-2012
161-002-0000	11-17-2011	Amend	1-1-2012	161-560-0010	7-3-2012	Adopt	8-1-2012
161-002-0000	1-1-2012	Amend(T)	2-1-2012	161-560-0020	1-1-2012	Adopt(T)	2-1-2012
161-002-0000	7-3-2012	Amend	8-1-2012	161-560-0020	7-3-2012	Adopt	8-1-2012
161-006-0000	11-17-2011	Amend	1-1-2012	161-570-0010	1-1-2012	Adopt(T)	2-1-2012
161-006-0025	11-17-2011	Amend	1-1-2012	161-570-0010	7-3-2012	Adopt	8-1-2012
161-006-0025(T)	11-17-2011	Repeal	1-1-2012	161-570-0015	7-3-2012	Adopt	8-1-2012
161-006-0160	11-17-2011	Amend	1-1-2012	161-570-0020	7-3-2012	Adopt	8-1-2012
161-006-0175	11-17-2011	Amend	1-1-2012	161-570-0030	7-3-2012	Adopt	8-1-2012
161-008-0040	11-17-2011	Amend	1-1-2012	161-570-0045	7-3-2012	Adopt	8-1-2012
161-010-0020	11-17-2011	Amend	1-1-2012	161-570-0050	7-3-2012	Adopt	8-1-2012
161-010-0025	11-17-2011	Amend	1-1-2012	162-040-0001	4-1-2012	Amend	3-1-2012
161-010-0035	11-17-2011	Amend	1-1-2012	162-040-0002	4-1-2012	Amend	3-1-2012
161-010-0045	11-17-2011	Amend	1-1-2012	162-040-0005	4-1-2012	Amend	3-1-2012
161-010-0085	11-17-2011	Amend	1-1-2012	162-040-0010	4-1-2012	Amend	3-1-2012
161-020-0015	11-17-2011	Amend	1-1-2012	162-040-0015	4-1-2012	Repeal	3-1-2012
161-020-0045	11-17-2011	Amend	1-1-2012	162-040-0020	4-1-2012	Amend	3-1-2012
161-020-0055	11-17-2011	Amend	1-1-2012	162-040-0050	4-1-2012	Amend	3-1-2012
161-020-0140	11-17-2011	Amend	1-1-2012	162-040-0054	4-1-2012	Amend	3-1-2012
161-020-0150	11-17-2011	Amend	1-1-2012	162-040-0055	4-1-2012	Amend	3-1-2012
161-025-0060	11-17-2011	Amend	1-1-2012	162-040-0060	4-1-2012	Amend	3-1-2012
161-025-0060	1-1-2012	Amend(T)	2-1-2012	162-040-0065	4-1-2012	Amend	3-1-2012
161-025-0060	7-3-2012	Amend	8-1-2012	162-040-0070	4-1-2012	Amend	3-1-2012
161-030-0000	1-1-2012	Amend	1-1-2012	162-040-0075	4-1-2012	Amend	3-1-2012
161-500-0000	1-1-2012	Adopt(T)	2-1-2012	162-040-0090	4-1-2012	Repeal	3-1-2012
161-500-0000	7-3-2012	Adopt	8-1-2012	162-040-0095	4-1-2012	Amend	3-1-2012
161-510-0010	1-1-2012	Adopt(T)	2-1-2012	162-040-0096	4-1-2012	Adopt	3-1-2012
161-510-0010	7-3-2012	Adopt	8-1-2012	162-040-0110	4-1-2012	Repeal	3-1-2012
161-510-0030	1-1-2012	Adopt(T)	2-1-2012	162-040-0115	4-1-2012	Repeal	3-1-2012
161-510-0030	7-3-2012	Adopt	8-1-2012	162-040-0120	4-1-2012	Repeal	3-1-2012
161-520-0005	7-3-2012	Adopt	8-1-2012	162-040-0125	4-1-2012	Repeal	3-1-2012
161-520-0010	1-1-2012	Adopt(T)	2-1-2012	162-040-0130	4-1-2012	Repeal	3-1-2012
161-520-0010	7-3-2012	Adopt	8-1-2012	162-040-0135	4-1-2012	Repeal	3-1-2012
161-520-0020	1-1-2012	Adopt(T)	2-1-2012	162-040-0136	4-1-2012	Repeal	3-1-2012
161-520-0020	7-3-2012	Adopt	8-1-2012	162-040-0140	4-1-2012	Repeal	3-1-2012
161-520-0030	1-1-2012	Adopt(T)	2-1-2012	162-040-0146	4-1-2012	Repeal	3-1-2012
161-520-0030	7-3-2012	Adopt	8-1-2012	162-040-0148	4-1-2012	Repeal	3-1-2012
161-520-0040	1-1-2012	Adopt(T)	2-1-2012	162-040-0155	4-1-2012	Amend	3-1-2012
161-520-0040	7-3-2012	Adopt	8-1-2012	165-001-0015	1-3-2012	Amend	2-1-2012

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165-001-0025	1-3-2012	Amend	2-1-2012	177-085-0065(T)	5-1-2012	Repeal	6-1-2012
165-001-0034	1-3-2012	Amend	2-1-2012	177-094-0080	6-29-2012	Amend(T)	8-1-2012
165-007-0030	4-24-2012	Amend	6-1-2012	177-094-0085	6-29-2012	Amend(T)	8-1-2012
165-007-0300	1-3-2012	Amend	2-1-2012	177-098-0110	1-9-2012	Amend(T)	2-1-2012
165-007-0320	1-3-2012	Repeal	2-1-2012	177-098-0110	5-1-2012	Amend	6-1-2012
165-010-0005	1-3-2012	Amend	2-1-2012	177-098-0110(T)	5-1-2012	Repeal	6-1-2012
165-010-0060	1-3-2012	Amend	2-1-2012	177-200-0020	12-1-2011	Amend	1-1-2012
165-010-0085	1-3-2012	Repeal	2-1-2012	177-200-0020(T)	12-1-2011	Repeal	1-1-2012
165-012-0005	1-3-2012	Amend	2-1-2012	177-200-0032	12-1-2011	Amend	1-1-2012
165-012-0060	1-3-2012	Repeal	2-1-2012	177-200-0032(T)	12-1-2011	Repeal	1-1-2012
165-012-0240	1-3-2012	Amend	2-1-2012	213-001-0000	4-27-2012	Amend(T)	6-1-2012
165-013-0010	1-3-2012	Amend	2-1-2012	213-003-0001	1-1-2012	Amend(T)	2-1-2012
165-013-0020	1-3-2012	Amend	2-1-2012	213-003-0001	4-27-2012	Amend	6-1-2012
165-014-0005	1-3-2012	Amend	2-1-2012	213-003-0001(T)	1-1-2012	Suspend	2-1-2012
165-014-0270	1-3-2012	Amend	2-1-2012	213-003-0001(T)	4-27-2012	Repeal	6-1-2012
165-016-0040	6-21-2012	Amend	8-1-2012	213-004-0001	4-27-2012	Amend	6-1-2012
165-016-0045	6-21-2012	Amend	8-1-2012	213-005-0001	4-27-2012	Amend	6-1-2012
165-016-0050	6-21-2012	Amend	8-1-2012	213-005-0011	4-27-2012	Amend	6-1-2012
165-016-0055	6-21-2012	Amend	8-1-2012	213-005-0013	4-27-2012	Amend	6-1-2012
165-016-0070	6-21-2012	Amend	8-1-2012	213-017-0006	1-1-2012	Amend(T)	2-1-2012
165-016-0080	6-21-2012	Amend	8-1-2012	213-017-0006	4-27-2012	Amend	6-1-2012
165-016-0100	6-21-2012	Adopt	8-1-2012	213-017-0006(T)	1-1-2012	Suspend	2-1-2012
165-016-0105	6-21-2012	Adopt	8-1-2012	213-017-0006(T)	4-27-2012	Repeal	6-1-2012
165-020-0005	1-3-2012	Repeal	2-1-2012	213-017-0007	1-27-2012	Amend(T)	3-1-2012
166-500-0030	5-1-2012	Amend(T)	6-1-2012	213-017-0007	4-27-2012	Amend	6-1-2012
170-061-0015	1-26-2012	Amend(T)	3-1-2012	213-017-0007(T)	4-27-2012	Repeal	6-1-2012
177-052-0000	12-1-2011	Adopt	1-1-2012	213-017-0008	4-27-2012	Amend	6-1-2012
177-052-0000(T)	12-1-2011	Repeal	1-1-2012	213-017-0008(T)	4-27-2012	Repeal	6-1-2012
177-052-0010	12-1-2011	Adopt	1-1-2012	213-018-0037	4-27-2012	Adopt	6-1-2012
177-052-0010(T)	12-1-2011	Repeal	1-1-2012	230-020-0300	7-12-2012	Amend(T)	8-1-2012
177-052-0020	12-1-2011	Adopt	1-1-2012	250-010-0150	4-20-2012	Amend	6-1-2012
177-052-0020(T)	12-1-2011	Repeal	1-1-2012	250-010-0440	12-22-2011	Amend(T)	2-1-2012
177-052-0030	12-1-2011	Adopt	1-1-2012	250-010-0440	4-20-2012	Amend	6-1-2012
177-052-0030(T)	12-1-2011	Repeal	1-1-2012	250-010-0440(T)	4-20-2012	Repeal	6-1-2012
177-052-0040	12-1-2011	Adopt	1-1-2012	250-010-0650	2-1-2012	Amend	2-1-2012
177-052-0040(T)	12-1-2011	Repeal	1-1-2012	250-010-0650	3-14-2012	Amend	4-1-2012
177-052-0050	12-1-2011	Adopt	1-1-2012	250-010-0650(T)	2-1-2012	Repeal	2-1-2012
177-052-0050(T)	12-1-2011	Repeal	1-1-2012	250-010-0660	2-1-2012	Adopt	2-1-2012
177-052-0060	12-1-2011	Adopt	1-1-2012	250-010-0660(T)	2-1-2012	Repeal	2-1-2012
177-052-0060(T)	12-1-2011	Repeal	1-1-2012	250-014-0001	5-1-2012	Amend	6-1-2012
177-052-0070	12-1-2011	Adopt	1-1-2012	250-014-0004	5-1-2012	Amend	6-1-2012
177-052-0070(T)	12-1-2011	Repeal	1-1-2012	250-017-0000	2-1-2012	Amend	2-1-2012
177-085-0000	1-15-2012	Amend	2-1-2012	250-017-0010	2-1-2012	Amend	2-1-2012
177-085-0005	1-15-2012	Amend	2-1-2012	250-017-0020	2-1-2012	Amend	2-1-2012
177-085-0010	1-15-2012	Amend	2-1-2012	250-017-0030	2-1-2012	Amend	2-1-2012
177-085-0015	1-15-2012	Amend	2-1-2012	250-017-0040	2-1-2012	Amend	2-1-2012
177-085-0020	1-15-2012	Amend	2-1-2012	250-020-0221	4-2-2012	Amend(T)	5-1-2012
177-085-0025	1-15-2012	Amend	2-1-2012	250-020-0221	5-1-2012	Amend	6-1-2012
177-085-0025	1-15-2012	Amend(T)	2-1-2012	250-020-0280	12-1-2011	Amend(T)	1-1-2012
177-085-0025	5-1-2012	Amend	6-1-2012	250-020-0280	1-1-2012	Amend(T)	2-1-2012
177-085-0025(T)	5-1-2012	Repeal	6-1-2012	250-020-0280	4-20-2012	Amend	6-1-2012
177-085-0030	1-15-2012	Amend	2-1-2012	250-020-0280(T)	1-1-2012	Suspend	2-1-2012
177-085-0035	1-15-2012	Amend	2-1-2012	250-020-0280(T)	4-20-2012	Repeal	6-1-2012
177-085-0065	1-15-2012	Amend	2-1-2012	250-030-0030	5-1-2012	Amend	6-1-2012
177-085-0065	1-15-2012	Amend(T)	2-1-2012	255-030-0013	6-28-2012	Amend(T)	8-1-2012

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255-032-0005	3-13-2012	Amend	4-1-2012	259-020-0005	6-28-2012	Amend	8-1-2012
255-032-0011	3-13-2012	Repeal	4-1-2012	259-020-0010	6-28-2012	Amend	8-1-2012
255-032-0022	6-28-2012	Amend(T)	8-1-2012	259-020-0015	12-30-2011	Amend	2-1-2012
255-032-0035	11-30-2011	Amend	1-1-2012	259-020-0015	2-24-2012	Amend(T)	4-1-2012
255-032-0037	11-30-2011	Adopt	1-1-2012	259-020-0015	6-28-2012	Amend	8-1-2012
255-032-0037	3-13-2012	Amend	4-1-2012	259-060-0015	4-2-2012	Amend	5-1-2012
255-075-0025	6-28-2012	Amend(T)	8-1-2012	259-061-0018	2-6-2012	Adopt(T)	3-1-2012
257-010-0060	12-15-2011	Adopt(T)	1-1-2012	259-061-0018	7-2-2012	Amend	8-1-2012
257-010-0060	5-22-2012	Adopt	7-1-2012	259-061-0018(T)	7-2-2012	Repeal	8-1-2012
257-080-0000	5-9-2012	Suspend	6-1-2012	259-070-0010	12-28-2011	Amend	2-1-2012
257-080-0000	7-12-2012	Amend(T)	8-1-2012	259-070-0020	7-1-2012	Amend	8-1-2012
257-080-0000(T)	7-12-2012	Suspend	8-1-2012	274-015-0010	2-22-2012	Amend	4-1-2012
257-080-0005	5-9-2012	Suspend	6-1-2012	274-015-0020	2-22-2012	Adopt	4-1-2012
257-080-0005	7-12-2012	Amend(T)	8-1-2012	274-020-0440	6-25-2012	Amend	8-1-2012
257-080-0005(T)	7-12-2012	Suspend	8-1-2012	274-045-0220	6-25-2012	Amend	8-1-2012
257-080-0010	5-9-2012	Suspend	6-1-2012	291-024-0081	11-17-2011	Adopt(T)	1-1-2012
257-080-0010	7-12-2012	Amend(T)	8-1-2012	291-031-0025	1-27-2012	Amend	3-1-2012
257-080-0010(T)	7-12-2012	Suspend	8-1-2012	291-031-0300	6-19-2012	Adopt	8-1-2012
257-080-0015	5-9-2012	Suspend	6-1-2012	291-031-0310	6-19-2012	Adopt	8-1-2012
257-080-0015	7-12-2012	Amend(T)	8-1-2012	291-031-0320	6-19-2012	Adopt	8-1-2012
257-080-0015(T)	7-12-2012	Suspend	8-1-2012	291-031-0330	6-19-2012	Adopt	8-1-2012
257-080-0020	5-9-2012	Suspend	6-1-2012	291-031-0340	6-19-2012	Adopt	8-1-2012
257-080-0020	7-12-2012	Amend(T)	8-1-2012	291-031-0350	6-19-2012	Adopt	8-1-2012
257-080-0020(T)	7-12-2012	Suspend	8-1-2012	291-031-0360	6-19-2012	Adopt	8-1-2012
257-080-0025	5-9-2012	Suspend	6-1-2012	291-062-0110	3-1-2012	Amend	4-1-2012
257-080-0025	7-12-2012	Amend(T)	8-1-2012	291-062-0140	3-1-2012	Amend	4-1-2012
257-080-0025(T)	7-12-2012	Suspend	8-1-2012	291-082-0105	3-1-2012	Amend	4-1-2012
257-080-0030	5-9-2012	Suspend	6-1-2012	291-082-0110	3-1-2012	Amend	4-1-2012
257-080-0030	7-12-2012	Amend(T)	8-1-2012	291-105-0005	12-7-2011	Amend	1-1-2012
257-080-0030(T)	7-12-2012	Suspend	8-1-2012	291-105-0010	12-7-2011	Amend	1-1-2012
257-080-0035	5-9-2012	Suspend	6-1-2012	291-105-0013	12-7-2011	Amend	1-1-2012
257-080-0035	7-12-2012	Amend(T)	8-1-2012	291-105-0015	12-7-2011	Amend	1-1-2012
257-080-0035(T)	7-12-2012	Suspend	8-1-2012	291-105-0021	12-7-2011	Amend	1-1-2012
257-080-0040	5-9-2012	Suspend	6-1-2012	291-105-0026	12-7-2011	Amend	1-1-2012
257-080-0040	7-12-2012	Amend(T)	8-1-2012	291-105-0028	12-7-2011	Amend	1-1-2012
257-080-0040(T)	7-12-2012	Suspend	8-1-2012	291-105-0031	12-7-2011	Amend	1-1-2012
257-080-0045	5-9-2012	Suspend	6-1-2012	291-105-0036	12-7-2011	Amend	1-1-2012
257-080-0045	7-12-2012	Amend(T)	8-1-2012	291-105-0041	12-7-2011	Amend	1-1-2012
257-080-0045(T)	7-12-2012	Suspend	8-1-2012	291-105-0046	12-7-2011	Amend	1-1-2012
257-080-0050	7-12-2012	Adopt(T)	8-1-2012	291-105-0066	12-7-2011	Amend	1-1-2012
257-080-0055	7-12-2012	Adopt(T)	8-1-2012	291-105-0069	12-7-2011	Amend	1-1-2012
259-001-0015	3-7-2012	Amend	4-1-2012	291-105-0081	12-7-2011	Amend	1-1-2012
259-003-0015	3-7-2012	Amend	4-1-2012	291-105-0100	12-7-2011	Amend	1-1-2012
259-005-0015	3-7-2012	Amend	4-1-2012	291-127-0320	6-19-2012	Amend	8-1-2012
259-008-0005	3-27-2012	Amend	5-1-2012	291-180-0115	12-7-2011	Repeal	1-1-2012
259-008-0011	3-26-2012	Amend	5-1-2012	291-180-0125	12-7-2011	Repeal	1-1-2012
259-008-0025	5-8-2012	Amend(T)	6-1-2012	291-180-0135	12-7-2011	Repeal	1-1-2012
259-008-0060	12-23-2011	Amend	2-1-2012	291-180-0145	12-7-2011	Repeal	1-1-2012
259-008-0066	3-29-2012	Amend	5-1-2012	291-180-0155	12-7-2011	Repeal	1-1-2012
259-008-0068	5-1-2012	Repeal	6-1-2012	291-180-0165	12-7-2011	Repeal	1-1-2012
259-008-0069	11-28-2011	Amend(T)	1-1-2012	291-180-0175	12-7-2011	Repeal	1-1-2012
259-008-0069	2-29-2012	Adopt	4-1-2012	291-180-0185	12-7-2011	Repeal	1-1-2012
259-008-0069(T)	2-29-2012	Repeal	4-1-2012	291-180-0195	12-7-2011	Repeal	1-1-2012
259-008-0070	4-24-2012	Amend	6-1-2012	291-180-0205	12-7-2011	Repeal	1-1-2012
259-008-0100	4-9-2012	Amend	5-1-2012	291-180-0215	12-7-2011	Repeal	1-1-2012
259-009-0062	3-28-2012	Amend	5-1-2012	291-180-0225	12-7-2011	Repeal	1-1-2012

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291-180-0235	12-7-2011	Repeal	1-1-2012	309-014-0320(T)	2-23-2012	Repeal	4-1-2012
291-180-0245	12-7-2011	Repeal	1-1-2012	309-014-0330	2-23-2012	Adopt	4-1-2012
291-180-0252	12-7-2011	Adopt	1-1-2012	309-014-0330(T)	2-23-2012	Repeal	4-1-2012
291-180-0255	12-7-2011	Repeal	1-1-2012	309-014-0340	2-23-2012	Adopt	4-1-2012
291-180-0262	12-7-2011	Adopt	1-1-2012	309-014-0340(T)	2-23-2012	Repeal	4-1-2012
291-180-0275	1-10-2012	Amend(T)	2-1-2012	309-016-0600	1-1-2012	Amend(T)	2-1-2012
291-180-0275	5-24-2012	Amend	7-1-2012	309-016-0600	6-19-2012	Amend	8-1-2012
291-180-0285	12-7-2011	Repeal	1-1-2012	309-016-0600	7-1-2012	Amend(T)	8-1-2012
291-180-0295	12-7-2011	Repeal	1-1-2012	309-016-0600(T)	6-19-2012	Repeal	8-1-2012
291-180-0305	12-7-2011	Repeal	1-1-2012	309-016-0605	1-1-2012	Amend(T)	2-1-2012
291-180-0315	12-7-2011	Repeal	1-1-2012	309-016-0605	5-17-2012	Amend(T)	7-1-2012
291-180-0325	12-7-2011	Repeal	1-1-2012	309-016-0605	6-19-2012	Amend	8-1-2012
291-180-0335	12-7-2011	Repeal	1-1-2012	309-016-0605	7-1-2012	Amend(T)	8-1-2012
291-180-0345	12-7-2011	Repeal	1-1-2012	309-016-0605(T)	6-19-2012	Repeal	8-1-2012
291-180-0355	12-7-2011	Repeal	1-1-2012	309-016-0610	1-1-2012	Amend(T)	2-1-2012
291-180-0365	12-7-2011	Repeal	1-1-2012	309-016-0610(T)	6-19-2012	Repeal	8-1-2012
291-180-0375	12-7-2011	Repeal	1-1-2012	309-016-0630	1-1-2012	Amend(T)	2-1-2012
291-180-0385	12-7-2011	Repeal	1-1-2012	309-016-0630	5-17-2012	Amend(T)	7-1-2012
291-180-0395	12-7-2011	Repeal	1-1-2012	309-016-0630	6-19-2012	Amend	8-1-2012
291-180-0405	12-7-2011	Repeal	1-1-2012	309-016-0630(T)	6-19-2012	Repeal	8-1-2012
291-180-0415	12-7-2011	Repeal	1-1-2012	309-016-0675	1-1-2012	Amend(T)	2-1-2012
291-180-0425	12-7-2011	Repeal	1-1-2012	309-016-0675	5-17-2012	Amend(T)	7-1-2012
291-180-0435	12-7-2011	Repeal	1-1-2012	309-016-0675	6-19-2012	Amend	8-1-2012
291-180-0445	12-7-2011	Repeal	1-1-2012	309-016-0675(T)	6-19-2012	Repeal	8-1-2012
291-180-0455	12-7-2011	Repeal	1-1-2012	309-016-0680	5-17-2012	Amend(T)	7-1-2012
291-180-0465	12-7-2011	Repeal	1-1-2012	309-016-0685	1-1-2012	Amend(T)	2-1-2012
291-180-0475	12-7-2011	Repeal	1-1-2012	309-016-0685	6-19-2012	Amend	8-1-2012
291-180-0485	12-7-2011	Repeal	1-1-2012	309-016-0685(T)	6-19-2012	Repeal	8-1-2012
291-180-0495	12-7-2011	Repeal	1-1-2012	309-016-0726	5-17-2012	Adopt(T)	7-1-2012
291-180-0505	12-7-2011	Repeal	1-1-2012	309-016-0727	5-17-2012	Adopt(T)	7-1-2012
291-180-0515	12-7-2011	Repeal	1-1-2012	309-016-0728	5-17-2012	Adopt(T)	7-1-2012
291-180-0525	12-7-2011	Repeal	1-1-2012	309-016-0729	5-17-2012	Adopt(T)	7-1-2012
291-180-0535	12-7-2011	Repeal	1-1-2012	309-016-0745	1-1-2012	Amend(T)	2-1-2012
291-180-0545	12-7-2011	Repeal	1-1-2012	309-016-0745	6-19-2012	Amend	8-1-2012
291-180-0555	12-7-2011	Repeal	1-1-2012	309-016-0745(T)	6-19-2012	Repeal	8-1-2012
291-180-0565	12-7-2011	Repeal	1-1-2012	309-016-0750	1-1-2012	Amend(T)	2-1-2012
291-180-0575	12-7-2011	Repeal	1-1-2012	309-016-0750	6-19-2012	Amend	8-1-2012
291-180-0585	12-7-2011	Repeal	1-1-2012	309-016-0750(T)	6-19-2012	Repeal	8-1-2012
291-180-0595	12-7-2011	Repeal	1-1-2012	309-016-0760	7-1-2012	Adopt(T)	8-1-2012
291-180-0605	12-7-2011	Repeal	1-1-2012	309-016-0765	7-1-2012	Adopt(T)	8-1-2012
291-180-0615	12-7-2011	Repeal	1-1-2012	309-016-0770	7-1-2012	Adopt(T)	8-1-2012
291-180-0625	12-7-2011	Repeal	1-1-2012	309-016-0775	7-1-2012	Adopt(T)	8-1-2012
291-180-0635	12-7-2011	Repeal	1-1-2012	309-016-0780	7-1-2012	Adopt(T)	8-1-2012
291-180-0645	12-7-2011	Repeal	1-1-2012	309-016-0800	7-1-2012	Adopt(T)	8-1-2012
291-180-0655	12-7-2011	Repeal	1-1-2012	309-016-0805	7-1-2012	Adopt(T)	8-1-2012
291-180-0665	12-7-2011	Repeal	1-1-2012	309-016-0810	7-1-2012	Adopt(T)	8-1-2012
291-208-0010	1-27-2012	Adopt	3-1-2012	309-016-0815	7-1-2012	Adopt(T)	8-1-2012
291-208-0020	1-27-2012	Adopt	3-1-2012	309-016-0820	7-1-2012	Adopt(T)	8-1-2012
291-208-0030	1-27-2012	Adopt	3-1-2012	309-031-0200	1-1-2012	Suspend	2-1-2012
291-208-0040	1-27-2012	Adopt	3-1-2012	309-031-0200	6-25-2012	Repeal	8-1-2012
291-208-0050	1-27-2012	Adopt	3-1-2012	309-031-0205	1-1-2012	Suspend	2-1-2012
309-014-0300	2-23-2012	Adopt	4-1-2012	309-031-0205	6-25-2012	Repeal	8-1-2012
309-014-0300(T)	2-23-2012	Repeal	4-1-2012	309-031-0210	1-1-2012	Suspend	2-1-2012
309-014-0310	2-23-2012	Adopt	4-1-2012	309-031-0210	6-25-2012	Repeal	8-1-2012
309-014-0310(T)	2-23-2012	Repeal	4-1-2012	309-031-0215	1-1-2012	Suspend	2-1-2012
309-014-0320	2-23-2012	Adopt	4-1-2012	309-031-0215	6-25-2012	Repeal	8-1-2012

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309-031-0220	1-1-2012	Suspend	2-1-2012	309-032-1540	1-1-2012	Amend(T)	2-1-2012
309-031-0220	6-25-2012	Repeal	8-1-2012	309-032-1540	6-15-2012	Amend	7-1-2012
309-031-0250	1-1-2012	Suspend	2-1-2012	309-032-1540(T)	6-15-2012	Repeal	7-1-2012
309-031-0250	6-25-2012	Repeal	8-1-2012	309-032-1545	1-1-2012	Amend(T)	2-1-2012
309-031-0255	1-1-2012	Suspend	2-1-2012	309-032-1545	6-15-2012	Amend	7-1-2012
309-031-0255	6-25-2012	Repeal	8-1-2012	309-032-1545(T)	6-15-2012	Repeal	7-1-2012
309-032-0175	11-22-2011	Suspend	1-1-2012	309-032-1550	1-1-2012	Amend(T)	2-1-2012
309-032-0180	11-22-2011	Suspend	1-1-2012	309-032-1550	6-15-2012	Amend	7-1-2012
309-032-0185	11-22-2011	Suspend	1-1-2012	309-032-1550(T)	6-15-2012	Repeal	7-1-2012
309-032-0190	11-22-2011	Suspend	1-1-2012	309-032-1555	1-1-2012	Amend(T)	2-1-2012
309-032-0195	11-22-2011	Suspend	1-1-2012	309-032-1555	6-15-2012	Amend	7-1-2012
309-032-0200	11-22-2011	Suspend	1-1-2012	309-032-1555(T)	6-15-2012	Repeal	7-1-2012
309-032-0205	11-22-2011	Suspend	1-1-2012	309-032-1560	1-1-2012	Amend(T)	2-1-2012
309-032-0210	11-22-2011	Suspend	1-1-2012	309-032-1560	6-15-2012	Amend	7-1-2012
309-032-0301	11-22-2011	Adopt(T)	1-1-2012	309-032-1560(T)	6-15-2012	Repeal	7-1-2012
309-032-0301	2-9-2012	Adopt	3-1-2012	309-032-1565	1-1-2012	Amend(T)	2-1-2012
309-032-0301(T)	2-9-2012	Repeal	3-1-2012	309-032-1565	6-15-2012	Amend	7-1-2012
309-032-0311	11-22-2011	Adopt(T)	1-1-2012	309-032-1565(T)	6-15-2012	Repeal	7-1-2012
309-032-0311	2-9-2012	Adopt	3-1-2012	309-035-0100	12-5-2011	Amend(T)	1-1-2012
309-032-0311(T)	2-9-2012	Repeal	3-1-2012	309-035-0100	5-4-2012	Amend	6-1-2012
309-032-0321	11-22-2011	Adopt(T)	1-1-2012	309-035-0100(T)	5-4-2012	Repeal	6-1-2012
309-032-0321	2-9-2012	Adopt	3-1-2012	309-035-0105	12-5-2011	Amend(T)	1-1-2012
309-032-0321(T)	2-9-2012	Repeal	3-1-2012	309-035-0105	5-4-2012	Amend	6-1-2012
309-032-0331	11-22-2011	Adopt(T)	1-1-2012	309-035-0105(T)	5-4-2012	Repeal	6-1-2012
309-032-0331	2-9-2012	Adopt	3-1-2012	309-035-0250	12-5-2011	Amend(T)	1-1-2012
309-032-0331(T)	2-9-2012	Repeal	3-1-2012	309-035-0250	5-4-2012	Amend	6-1-2012
309-032-0341	11-22-2011	Adopt(T)	1-1-2012	309-035-0250(T)	5-4-2012	Repeal	6-1-2012
309-032-0341	2-9-2012	Adopt	3-1-2012	309-035-0260	12-5-2011	Amend(T)	1-1-2012
309-032-0341(T)	2-9-2012	Repeal	3-1-2012	309-035-0260	5-4-2012	Amend	6-1-2012
309-032-0351	11-22-2011	Adopt(T)	1-1-2012	309-035-0260(T)	5-4-2012	Repeal	6-1-2012
309-032-0351	2-9-2012	Adopt	3-1-2012	309-040-0300	12-5-2011	Amend(T)	1-1-2012
309-032-0351(T)	2-9-2012	Repeal	3-1-2012	309-040-0300	5-4-2012	Amend	6-1-2012
309-032-1500	1-1-2012	Amend(T)	2-1-2012	309-040-0300(T)	5-4-2012	Repeal	6-1-2012
309-032-1500	6-15-2012	Amend	7-1-2012	309-040-0305	12-5-2011	Amend(T)	1-1-2012
309-032-1500(T)	6-15-2012	Repeal	7-1-2012	309-040-0305	5-4-2012	Amend	6-1-2012
309-032-1505	1-1-2012	Amend(T)	2-1-2012	309-040-0305(T)	5-4-2012	Repeal	6-1-2012
309-032-1505	6-15-2012	Amend	7-1-2012	309-090-0000	1-1-2012	Adopt(T)	2-1-2012
309-032-1505(T)	6-15-2012	Repeal	7-1-2012	309-090-0000	6-25-2012	Adopt	8-1-2012
309-032-1510	1-1-2012	Amend(T)	2-1-2012	309-090-0000(T)	6-25-2012	Repeal	8-1-2012
309-032-1510	6-15-2012	Amend	7-1-2012	309-090-0005	1-1-2012	Adopt(T)	2-1-2012
309-032-1510(T)	6-15-2012	Repeal	7-1-2012	309-090-0005	6-25-2012	Adopt	8-1-2012
309-032-1515	1-1-2012	Amend(T)	2-1-2012	309-090-0005(T)	6-25-2012	Repeal	8-1-2012
309-032-1515	6-15-2012	Amend	7-1-2012	309-090-0010	1-1-2012	Adopt(T)	2-1-2012
309-032-1515(T)	6-15-2012	Repeal	7-1-2012	309-090-0010	6-25-2012	Adopt	8-1-2012
309-032-1520	1-1-2012	Amend(T)	2-1-2012	309-090-0010(T)	6-25-2012	Repeal	8-1-2012
309-032-1520	6-15-2012	Amend	7-1-2012	309-090-0015	1-1-2012	Adopt(T)	2-1-2012
309-032-1520(T)	6-15-2012	Repeal	7-1-2012	309-090-0015	6-25-2012	Adopt	8-1-2012
309-032-1525	1-1-2012	Amend(T)	2-1-2012	309-090-0015(T)	6-25-2012	Repeal	8-1-2012
309-032-1525	6-15-2012	Amend	7-1-2012	309-090-0020	1-1-2012	Adopt(T)	2-1-2012
309-032-1525(T)	6-15-2012	Repeal	7-1-2012	309-090-0020	6-25-2012	Adopt	8-1-2012
309-032-1530	1-1-2012	Amend(T)	2-1-2012	309-090-0020(T)	6-25-2012	Repeal	8-1-2012
309-032-1530	6-15-2012	Amend	7-1-2012	309-090-0025	1-1-2012	Adopt(T)	2-1-2012
309-032-1530(T)	6-15-2012	Repeal	7-1-2012	309-090-0025	6-25-2012	Adopt	8-1-2012
309-032-1535	1-1-2012	Amend(T)	2-1-2012	309-090-0025(T)	6-25-2012	Repeal	8-1-2012
309-032-1535	6-15-2012	Amend	7-1-2012	309-090-0030	1-1-2012	Adopt(T)	2-1-2012
309-032-1535(T)	6-15-2012	Repeal	7-1-2012	309-090-0030	6-25-2012	Adopt	8-1-2012

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309-090-0030(T)	6-25-2012	Repeal	8-1-2012	309-092-0025	1-1-2012	Adopt(T)	2-1-2012
309-090-0035	1-1-2012	Adopt(T)	2-1-2012	309-092-0025	6-19-2012	Adopt	8-1-2012
309-090-0035	6-25-2012	Adopt	8-1-2012	309-092-0025(T)	6-19-2012	Repeal	8-1-2012
309-090-0035(T)	6-25-2012	Repeal	8-1-2012	309-092-0030	1-1-2012	Adopt(T)	2-1-2012
309-090-0040	1-1-2012	Adopt(T)	2-1-2012	309-092-0030	6-19-2012	Adopt	8-1-2012
309-090-0040	6-25-2012	Adopt	8-1-2012	309-092-0030(T)	6-19-2012	Repeal	8-1-2012
309-090-0040(T)	6-25-2012	Repeal	8-1-2012	309-092-0035	1-1-2012	Adopt(T)	2-1-2012
309-090-0050	6-25-2012	Adopt	8-1-2012	309-092-0035	6-19-2012	Adopt	8-1-2012
309-091-0000	1-1-2012	Adopt(T)	2-1-2012	309-092-0035(T)	6-19-2012	Repeal	8-1-2012
309-091-0000	5-4-2012	Adopt	6-1-2012	309-092-0040	1-1-2012	Adopt(T)	2-1-2012
309-091-0000(T)	5-4-2012	Repeal	6-1-2012	309-092-0040	6-19-2012	Adopt	8-1-2012
309-091-0005	1-1-2012	Adopt(T)	2-1-2012	309-092-0040(T)	6-19-2012	Repeal	8-1-2012
309-091-0005	5-4-2012	Adopt	6-1-2012	309-092-0045	1-1-2012	Adopt(T)	2-1-2012
309-091-0005(T)	5-4-2012	Repeal	6-1-2012	309-092-0045	6-19-2012	Adopt	8-1-2012
309-091-0010	1-1-2012	Adopt(T)	2-1-2012	309-092-0045(T)	6-19-2012	Repeal	8-1-2012
309-091-0010	5-4-2012	Adopt	6-1-2012	309-092-0050	1-1-2012	Adopt(T)	2-1-2012
309-091-0010(T)	5-4-2012	Repeal	6-1-2012	309-092-0050	6-19-2012	Adopt	8-1-2012
309-091-0015	1-1-2012	Adopt(T)	2-1-2012	309-092-0050(T)	6-19-2012	Repeal	8-1-2012
309-091-0015	5-4-2012	Adopt	6-1-2012	309-092-0055	1-1-2012	Adopt(T)	2-1-2012
309-091-0015(T)	5-4-2012	Repeal	6-1-2012	309-092-0055	6-19-2012	Adopt	8-1-2012
309-091-0020	1-1-2012	Adopt(T)	2-1-2012	309-092-0055(T)	6-19-2012	Repeal	8-1-2012
309-091-0020	5-4-2012	Adopt	6-1-2012	309-092-0060	1-1-2012	Adopt(T)	2-1-2012
309-091-0020(T)	5-4-2012	Repeal	6-1-2012	309-092-0060	6-19-2012	Adopt	8-1-2012
309-091-0025	1-1-2012	Adopt(T)	2-1-2012	309-092-0060(T)	6-19-2012	Repeal	8-1-2012
309-091-0025	5-4-2012	Adopt	6-1-2012	309-092-0065	1-1-2012	Adopt(T)	2-1-2012
309-091-0025(T)	5-4-2012	Repeal	6-1-2012	309-092-0065	6-19-2012	Adopt	8-1-2012
309-091-0030	1-1-2012	Adopt(T)	2-1-2012	309-092-0065(T)	6-19-2012	Repeal	8-1-2012
309-091-0030	5-4-2012	Adopt	6-1-2012	309-092-0070	1-1-2012	Adopt(T)	2-1-2012
309-091-0030(T)	5-4-2012	Repeal	6-1-2012	309-092-0070	6-19-2012	Adopt	8-1-2012
309-091-0035	1-1-2012	Adopt(T)	2-1-2012	309-092-0070(T)	6-19-2012	Repeal	8-1-2012
309-091-0035	5-4-2012	Adopt	6-1-2012	309-092-0075	1-1-2012	Adopt(T)	2-1-2012
309-091-0035(T)	5-4-2012	Repeal	6-1-2012	309-092-0075	6-19-2012	Adopt	8-1-2012
309-091-0040	1-1-2012	Adopt(T)	2-1-2012	309-092-0075(T)	6-19-2012	Repeal	8-1-2012
309-091-0040	5-4-2012	Adopt	6-1-2012	309-092-0080	1-1-2012	Adopt(T)	2-1-2012
309-091-0040(T)	5-4-2012	Repeal	6-1-2012	309-092-0080	6-19-2012	Adopt	8-1-2012
309-091-0045	1-1-2012	Adopt(T)	2-1-2012	309-092-0080(T)	6-19-2012	Repeal	8-1-2012
309-091-0045	5-4-2012	Adopt	6-1-2012	309-092-0085	1-1-2012	Adopt(T)	2-1-2012
309-091-0045(T)	5-4-2012	Repeal	6-1-2012	309-092-0085	6-19-2012	Adopt	8-1-2012
309-091-0050	1-1-2012	Adopt(T)	2-1-2012	309-092-0085(T)	6-19-2012	Repeal	8-1-2012
309-091-0050	5-4-2012	Adopt	6-1-2012	309-092-0090	1-1-2012	Adopt(T)	2-1-2012
309-091-0050(T)	5-4-2012	Repeal	6-1-2012	309-092-0090	6-19-2012	Adopt	8-1-2012
309-092-0000	1-1-2012	Adopt(T)	2-1-2012	309-092-0090(T)	6-19-2012	Repeal	8-1-2012
309-092-0000	6-19-2012	Adopt	8-1-2012	309-092-0095	1-1-2012	Adopt(T)	2-1-2012
309-092-0000(T)	6-19-2012	Repeal	8-1-2012	309-092-0095	6-19-2012	Adopt	8-1-2012
309-092-0005	1-1-2012	Adopt(T)	2-1-2012	309-092-0095(T)	6-19-2012	Repeal	8-1-2012
309-092-0005	6-19-2012	Adopt	8-1-2012	309-092-0100	1-1-2012	Adopt(T)	2-1-2012
309-092-0005(T)	6-19-2012	Repeal	8-1-2012	309-092-0100	6-19-2012	Adopt	8-1-2012
309-092-0010	1-1-2012	Adopt(T)	2-1-2012	309-092-0100(T)	6-19-2012	Repeal	8-1-2012
309-092-0010	6-19-2012	Adopt	8-1-2012	309-092-0105	1-1-2012	Adopt(T)	2-1-2012
309-092-0010(T)	6-19-2012	Repeal	8-1-2012	309-092-0105	6-19-2012	Adopt	8-1-2012
309-092-0015	1-1-2012	Adopt(T)	2-1-2012	309-092-0105(T)	6-19-2012	Repeal	8-1-2012
309-092-0015	6-19-2012	Adopt	8-1-2012	309-092-0110	1-1-2012	Adopt(T)	2-1-2012
309-092-0015(T)	6-19-2012	Repeal	8-1-2012	309-092-0110	6-19-2012	Adopt	8-1-2012
309-092-0020	1-1-2012	Adopt(T)	2-1-2012	309-092-0110(T)	6-19-2012	Repeal	8-1-2012
309-092-0020	6-19-2012	Adopt	8-1-2012	309-092-0115	1-1-2012	Adopt(T)	2-1-2012
309-092-0020(T)	6-19-2012	Repeal	8-1-2012	309-092-0115	6-19-2012	Adopt	8-1-2012

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309-092-0115(T)	6-19-2012	Repeal	8-1-2012	309-092-0210	1-1-2012	Adopt(T)	2-1-2012
309-092-0120	1-1-2012	Adopt(T)	2-1-2012	309-092-0210	6-19-2012	Adopt	8-1-2012
309-092-0120	6-19-2012	Adopt	8-1-2012	309-092-0210(T)	6-19-2012	Repeal	8-1-2012
309-092-0120(T)	6-19-2012	Repeal	8-1-2012	309-092-0215	1-1-2012	Adopt(T)	2-1-2012
309-092-0125	1-1-2012	Adopt(T)	2-1-2012	309-092-0215	6-19-2012	Adopt	8-1-2012
309-092-0125	6-19-2012	Adopt	8-1-2012	309-092-0215(T)	6-19-2012	Repeal	8-1-2012
309-092-0125(T)	6-19-2012	Repeal	8-1-2012	309-092-0220	1-1-2012	Adopt(T)	2-1-2012
309-092-0130	1-1-2012	Adopt(T)	2-1-2012	309-092-0220	6-19-2012	Adopt	8-1-2012
309-092-0130	6-19-2012	Adopt	8-1-2012	309-092-0220(T)	6-19-2012	Repeal	8-1-2012
309-092-0130(T)	6-19-2012	Repeal	8-1-2012	309-092-0225	1-1-2012	Adopt(T)	2-1-2012
309-092-0135	1-1-2012	Adopt(T)	2-1-2012	309-092-0225	6-19-2012	Adopt	8-1-2012
309-092-0135	6-19-2012	Adopt	8-1-2012	309-092-0225(T)	6-19-2012	Repeal	8-1-2012
309-092-0135(T)	6-19-2012	Repeal	8-1-2012	309-092-0230	1-1-2012	Adopt(T)	2-1-2012
309-092-0140	1-1-2012	Adopt(T)	2-1-2012	309-092-0230	6-19-2012	Adopt	8-1-2012
309-092-0140	6-19-2012	Adopt	8-1-2012	309-092-0230(T)	6-19-2012	Repeal	8-1-2012
309-092-0140(T)	6-19-2012	Repeal	8-1-2012	309-092-0235	1-1-2012	Adopt(T)	2-1-2012
309-092-0145	1-1-2012	Adopt(T)	2-1-2012	309-092-0235	6-19-2012	Adopt	8-1-2012
309-092-0145	6-19-2012	Adopt	8-1-2012	309-092-0235(T)	6-19-2012	Repeal	8-1-2012
309-092-0145(T)	6-19-2012	Repeal	8-1-2012	309-092-0240	1-1-2012	Adopt(T)	2-1-2012
309-092-0150	1-1-2012	Adopt(T)	2-1-2012	309-092-0240	6-19-2012	Adopt	8-1-2012
309-092-0150	6-19-2012	Adopt	8-1-2012	309-092-0240(T)	6-19-2012	Repeal	8-1-2012
309-092-0150(T)	6-19-2012	Repeal	8-1-2012	309-102-0100	2-9-2012	Adopt	3-1-2012
309-092-0155	1-1-2012	Adopt(T)	2-1-2012	309-102-0100(T)	2-9-2012	Repeal	3-1-2012
309-092-0155	6-19-2012	Adopt	8-1-2012	309-102-0110	2-9-2012	Adopt	3-1-2012
309-092-0155(T)	6-19-2012	Repeal	8-1-2012	309-102-0110(T)	2-9-2012	Repeal	3-1-2012
309-092-0160	1-1-2012	Adopt(T)	2-1-2012	309-102-0120	2-9-2012	Adopt	3-1-2012
309-092-0160	6-19-2012	Adopt	8-1-2012	309-102-0120(T)	2-9-2012	Repeal	3-1-2012
309-092-0160(T)	6-19-2012	Repeal	8-1-2012	309-102-0130	2-9-2012	Adopt	3-1-2012
309-092-0165	1-1-2012	Adopt(T)	2-1-2012	309-102-0130(T)	2-9-2012	Repeal	3-1-2012
309-092-0165	6-19-2012	Adopt	8-1-2012	309-102-0140	2-9-2012	Adopt	3-1-2012
309-092-0165(T)	6-19-2012	Repeal	8-1-2012	309-102-0140(T)	2-9-2012	Repeal	3-1-2012
309-092-0170	1-1-2012	Adopt(T)	2-1-2012	309-102-0150	2-9-2012	Adopt	3-1-2012
309-092-0170	6-19-2012	Adopt	8-1-2012	309-102-0150(T)	2-9-2012	Repeal	3-1-2012
309-092-0170(T)	6-19-2012	Repeal	8-1-2012	325-005-0015	4-1-2012	Amend	5-1-2012
309-092-0175	1-1-2012	Adopt(T)	2-1-2012	330-070-0013	1-1-2012	Amend	2-1-2012
309-092-0175	6-19-2012	Adopt	8-1-2012	330-070-0014	1-1-2012	Amend	2-1-2012
309-092-0175(T)	6-19-2012	Repeal	8-1-2012	330-070-0019	1-1-2012	Amend	2-1-2012
309-092-0178	6-19-2012	Adopt	8-1-2012	330-070-0020	1-1-2012	Amend	2-1-2012
309-092-0180	1-1-2012	Adopt(T)	2-1-2012	330-070-0021	1-1-2012	Amend	2-1-2012
309-092-0180	6-19-2012	Adopt	8-1-2012	330-070-0022	1-1-2012	Amend	2-1-2012
309-092-0180(T)	6-19-2012	Repeal	8-1-2012	330-070-0024	1-1-2012	Amend	2-1-2012
309-092-0185	1-1-2012	Adopt(T)	2-1-2012	330-070-0025	1-1-2012	Amend	2-1-2012
309-092-0185	6-19-2012	Adopt	8-1-2012	330-070-0026	1-1-2012	Amend	2-1-2012
309-092-0185(T)	6-19-2012	Repeal	8-1-2012	330-070-0027	1-1-2012	Amend	2-1-2012
309-092-0190	1-1-2012	Adopt(T)	2-1-2012	330-070-0029	1-1-2012	Adopt	2-1-2012
309-092-0190	6-19-2012	Adopt	8-1-2012	330-070-0045	1-1-2012	Amend	2-1-2012
309-092-0190(T)	6-19-2012	Repeal	8-1-2012	330-070-0048	1-1-2012	Amend	2-1-2012
309-092-0195	1-1-2012	Adopt(T)	2-1-2012	330-070-0060	1-1-2012	Amend	2-1-2012
309-092-0195	6-19-2012	Adopt	8-1-2012	330-070-0064	1-1-2012	Amend	2-1-2012
309-092-0195(T)	6-19-2012	Repeal	8-1-2012	330-070-0070	1-1-2012	Amend	2-1-2012
309-092-0200	1-1-2012	Adopt(T)	2-1-2012	330-070-0073	1-1-2012	Amend	2-1-2012
309-092-0200	6-19-2012	Adopt	8-1-2012	330-070-0089	1-1-2012	Amend	2-1-2012
309-092-0200(T)	6-19-2012	Repeal	8-1-2012	330-070-0091	1-1-2012	Amend	2-1-2012
309-092-0205	1-1-2012	Adopt(T)	2-1-2012	330-070-0097	1-1-2012	Amend	2-1-2012
309-092-0205	6-19-2012	Adopt	8-1-2012	330-090-0105	7-10-2012	Amend	8-1-2012
309-092-0205(T)	6-19-2012	Repeal	8-1-2012	330-090-0110	7-10-2012	Amend	8-1-2012

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330-090-0120	7-10-2012	Amend	8-1-2012	330-210-0060(T)	6-19-2012	Repeal	8-1-2012
330-090-0130	1-13-2012	Amend(T)	2-1-2012	330-210-0070	12-23-2011	Adopt(T)	2-1-2012
330-090-0130	7-10-2012	Amend	8-1-2012	330-210-0070	6-19-2012	Adopt	8-1-2012
330-090-0130(T)	7-10-2012	Repeal	8-1-2012	330-210-0070(T)	6-19-2012	Repeal	8-1-2012
330-090-0133	11-30-2011	Amend	1-1-2012	330-210-0080	12-23-2011	Adopt(T)	2-1-2012
330-090-0133	7-10-2012	Amend	8-1-2012	330-210-0080	6-19-2012	Adopt	8-1-2012
330-090-0150	7-10-2012	Amend	8-1-2012	330-210-0080(T)	6-19-2012	Repeal	8-1-2012
330-090-0160	11-30-2011	Adopt	1-1-2012	330-210-0090	12-23-2011	Adopt(T)	2-1-2012
330-090-0160	7-10-2012	Amend	8-1-2012	330-210-0090	6-19-2012	Adopt	8-1-2012
330-090-0350	7-10-2012	Amend	8-1-2012	330-210-0090(T)	6-19-2012	Repeal	8-1-2012
330-150-0005	5-1-2012	Repeal	6-1-2012	330-210-0100	12-23-2011	Adopt(T)	2-1-2012
330-150-0015	5-1-2012	Repeal	6-1-2012	330-210-0100	6-19-2012	Adopt	8-1-2012
330-150-0020	5-1-2012	Repeal	6-1-2012	330-210-0100(T)	6-19-2012	Repeal	8-1-2012
330-150-0025	5-1-2012	Repeal	6-1-2012	330-210-0150	12-23-2011	Adopt(T)	2-1-2012
330-150-0030	5-1-2012	Repeal	6-1-2012	330-210-0150	6-19-2012	Adopt	8-1-2012
330-180-0010	11-22-2011	Adopt	1-1-2012	330-210-0150(T)	6-19-2012	Repeal	8-1-2012
330-180-0020	11-22-2011	Adopt	1-1-2012	330-220-0000	2-7-2012	Adopt(T)	3-1-2012
330-180-0030	11-22-2011	Adopt	1-1-2012	330-220-0010	2-7-2012	Adopt(T)	3-1-2012
330-180-0040	11-22-2011	Adopt	1-1-2012	330-220-0020	2-7-2012	Adopt(T)	3-1-2012
330-180-0050	11-22-2011	Adopt	1-1-2012	330-220-0030	2-7-2012	Adopt(T)	3-1-2012
330-180-0060	11-22-2011	Adopt	1-1-2012	330-220-0040	2-7-2012	Adopt(T)	3-1-2012
330-180-0070	11-22-2011	Adopt	1-1-2012	330-220-0050	2-7-2012	Adopt(T)	3-1-2012
330-200-0000	2-22-2012	Adopt(T)	4-1-2012	330-220-0070	2-7-2012	Adopt(T)	3-1-2012
330-200-0010	2-22-2012	Adopt(T)	4-1-2012	330-220-0080	2-7-2012	Adopt(T)	3-1-2012
330-200-0020	2-22-2012	Adopt(T)	4-1-2012	330-220-0090	2-7-2012	Adopt(T)	3-1-2012
330-200-0030	2-22-2012	Adopt(T)	4-1-2012	330-220-0100	2-7-2012	Adopt(T)	3-1-2012
330-200-0040	2-22-2012	Adopt(T)	4-1-2012	330-220-0150	2-7-2012	Adopt(T)	3-1-2012
330-200-0050	2-22-2012	Adopt(T)	4-1-2012	330-225-0000	6-11-2012	Adopt	7-1-2012
330-200-0060	2-22-2012	Adopt(T)	4-1-2012	330-225-0010	6-11-2012	Adopt	7-1-2012
330-200-0070	2-22-2012	Adopt(T)	4-1-2012	330-225-0020	6-11-2012	Adopt	7-1-2012
330-200-0080	2-22-2012	Adopt(T)	4-1-2012	330-225-0030	6-11-2012	Adopt	7-1-2012
330-200-0090	2-22-2012	Adopt(T)	4-1-2012	330-225-0040	6-11-2012	Adopt	7-1-2012
330-200-0150	2-22-2012	Adopt(T)	4-1-2012	330-225-0050	6-11-2012	Adopt	7-1-2012
330-210-0000	12-23-2011	Adopt(T)	2-1-2012	330-225-0070	6-11-2012	Adopt	7-1-2012
330-210-0000	6-19-2012	Adopt	8-1-2012	330-225-0080	6-11-2012	Adopt	7-1-2012
330-210-0000(T)	6-19-2012	Repeal	8-1-2012	330-225-0090	6-11-2012	Adopt	7-1-2012
330-210-0010	12-23-2011	Adopt(T)	2-1-2012	330-225-0100	6-11-2012	Adopt	7-1-2012
330-210-0010	6-19-2012	Adopt	8-1-2012	330-225-0150	6-11-2012	Adopt	7-1-2012
330-210-0010(T)	6-19-2012	Repeal	8-1-2012	330-230-0000	12-23-2011	Adopt(T)	2-1-2012
330-210-0020	12-23-2011	Adopt(T)	2-1-2012	330-230-0000	6-19-2012	Adopt	8-1-2012
330-210-0020	6-19-2012	Adopt	8-1-2012	330-230-0000(T)	6-19-2012	Repeal	8-1-2012
330-210-0020(T)	6-19-2012	Repeal	8-1-2012	330-230-0010	12-23-2011	Adopt(T)	2-1-2012
330-210-0030	12-23-2011	Adopt(T)	2-1-2012	330-230-0010	6-19-2012	Adopt	8-1-2012
330-210-0030	6-19-2012	Adopt	8-1-2012	330-230-0010(T)	6-19-2012	Repeal	8-1-2012
330-210-0030(T)	6-19-2012	Repeal	8-1-2012	330-230-0020	12-23-2011	Adopt(T)	2-1-2012
330-210-0040	12-23-2011	Adopt(T)	2-1-2012	330-230-0020	6-19-2012	Adopt	8-1-2012
330-210-0040	6-19-2012	Adopt	8-1-2012	330-230-0020(T)	6-19-2012	Repeal	8-1-2012
330-210-0040(T)	6-19-2012	Repeal	8-1-2012	330-230-0030	12-23-2011	Adopt(T)	2-1-2012
330-210-0045	12-23-2011	Adopt(T)	2-1-2012	330-230-0030	6-19-2012	Adopt	8-1-2012
330-210-0045	6-19-2012	Adopt	8-1-2012	330-230-0030(T)	6-19-2012	Repeal	8-1-2012
330-210-0045(T)	6-19-2012	Repeal	8-1-2012	330-230-0040	12-23-2011	Adopt(T)	2-1-2012
330-210-0050	12-23-2011	Adopt(T)	2-1-2012	330-230-0040	6-19-2012	Adopt	8-1-2012
330-210-0050	6-19-2012	Adopt	8-1-2012	330-230-0040(T)	6-19-2012	Repeal	8-1-2012
330-210-0050(T)	6-19-2012	Repeal	8-1-2012	330-230-0050	12-23-2011	Adopt(T)	2-1-2012
330-210-0060	12-23-2011	Adopt(T)	2-1-2012	330-230-0050	6-19-2012	Adopt	8-1-2012
330-210-0060	6-19-2012	Adopt	8-1-2012	330-230-0050(T)	6-19-2012	Repeal	8-1-2012

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330-230-0060	12-23-2011	Adopt(T)	2-1-2012	331-505-0010	1-1-2012	Repeal	2-1-2012
330-230-0060	6-19-2012	Adopt	8-1-2012	331-510-0000	1-1-2012	Repeal	2-1-2012
330-230-0060(T)	6-19-2012	Repeal	8-1-2012	331-515-0000	1-1-2012	Repeal	2-1-2012
330-230-0110	12-23-2011	Adopt(T)	2-1-2012	331-515-0010	1-1-2012	Repeal	2-1-2012
330-230-0110	6-19-2012	Adopt	8-1-2012	331-515-0020	1-1-2012	Repeal	2-1-2012
330-230-0110(T)	6-19-2012	Repeal	8-1-2012	331-515-0030	1-1-2012	Repeal	2-1-2012
330-230-0120	12-23-2011	Adopt(T)	2-1-2012	331-520-0000	1-1-2012	Repeal	2-1-2012
330-230-0120	6-19-2012	Adopt	8-1-2012	331-520-0010	1-1-2012	Repeal	2-1-2012
330-230-0120(T)	6-19-2012	Repeal	8-1-2012	331-520-0030	1-1-2012	Repeal	2-1-2012
330-230-0130	12-23-2011	Adopt(T)	2-1-2012	331-520-0040	1-1-2012	Repeal	2-1-2012
330-230-0130	6-19-2012	Adopt	8-1-2012	331-520-0070	1-1-2012	Repeal	2-1-2012
330-230-0130(T)	6-19-2012	Repeal	8-1-2012	331-525-0000	1-1-2012	Repeal	2-1-2012
330-230-0140	12-23-2011	Adopt(T)	2-1-2012	331-525-0020	1-1-2012	Repeal	2-1-2012
330-230-0140	6-19-2012	Adopt	8-1-2012	331-525-0035	1-1-2012	Repeal	2-1-2012
330-230-0140(T)	6-19-2012	Repeal	8-1-2012	331-525-0038	1-1-2012	Repeal	2-1-2012
330-230-0150	6-19-2012	Adopt	8-1-2012	331-525-0040	1-1-2012	Repeal	2-1-2012
331-020-0020	3-1-2012	Amend(T)	4-1-2012	331-525-0055	1-1-2012	Repeal	2-1-2012
331-020-0020	5-15-2012	Amend	6-1-2012	331-525-0060	1-1-2012	Repeal	2-1-2012
331-020-0020(T)	5-15-2012	Repeal	6-1-2012	331-525-0065	1-1-2012	Repeal	2-1-2012
331-1-900-0000(T)	6-25-2012	Repeal	8-1-2012	331-530-0000	1-1-2012	Repeal	2-1-2012
331-205-0020	1-1-2012	Repeal	2-1-2012	331-530-0020	1-1-2012	Repeal	2-1-2012
331-205-0030	1-1-2012	Repeal	2-1-2012	331-535-0000	1-1-2012	Repeal	2-1-2012
331-210-0000	1-1-2012	Repeal	2-1-2012	331-535-0010	1-1-2012	Repeal	2-1-2012
331-210-0010	1-1-2012	Repeal	2-1-2012	331-535-0020	1-1-2012	Repeal	2-1-2012
331-210-0020	1-1-2012	Repeal	2-1-2012	331-535-0030	1-1-2012	Repeal	2-1-2012
331-210-0021	1-1-2012	Repeal	2-1-2012	331-535-0040	1-1-2012	Repeal	2-1-2012
331-215-0000	1-1-2012	Repeal	2-1-2012	331-535-0050	1-1-2012	Repeal	2-1-2012
331-215-0010	1-1-2012	Repeal	2-1-2012	331-535-0060	1-1-2012	Repeal	2-1-2012
331-215-0020	1-1-2012	Repeal	2-1-2012	331-535-0070	1-1-2012	Repeal	2-1-2012
331-215-0030	1-1-2012	Repeal	2-1-2012	331-535-0080	1-1-2012	Repeal	2-1-2012
331-215-0040	1-1-2012	Repeal	2-1-2012	331-540-0000	1-1-2012	Repeal	2-1-2012
331-220-0000	1-1-2012	Repeal	2-1-2012	331-540-0010	1-1-2012	Repeal	2-1-2012
331-220-0010	1-1-2012	Repeal	2-1-2012	331-540-0020	1-1-2012	Repeal	2-1-2012
331-220-0020	1-1-2012	Repeal	2-1-2012	331-540-0030	1-1-2012	Repeal	2-1-2012
331-220-0030	1-1-2012	Repeal	2-1-2012	331-545-0000	1-1-2012	Repeal	2-1-2012
331-220-0040	1-1-2012	Repeal	2-1-2012	331-545-0020	1-1-2012	Repeal	2-1-2012
331-220-0050	1-1-2012	Repeal	2-1-2012	331-550-0000	1-1-2012	Repeal	2-1-2012
331-220-0060	1-1-2012	Repeal	2-1-2012	331-555-0010	1-1-2012	Repeal	2-1-2012
331-220-0080	1-1-2012	Repeal	2-1-2012	331-555-0030	1-1-2012	Repeal	2-1-2012
331-225-0000	1-1-2012	Repeal	2-1-2012	331-555-0040	1-1-2012	Repeal	2-1-2012
331-225-0020	1-1-2012	Repeal	2-1-2012	331-560-0000	1-1-2012	Repeal	2-1-2012
331-225-0030	1-1-2012	Repeal	2-1-2012	331-560-0010	1-1-2012	Repeal	2-1-2012
331-225-0040	1-1-2012	Repeal	2-1-2012	331-560-0020	1-1-2012	Repeal	2-1-2012
331-225-0050	1-1-2012	Repeal	2-1-2012	331-560-0030	1-1-2012	Repeal	2-1-2012
331-225-0060	1-1-2012	Repeal	2-1-2012	331-560-0040	1-1-2012	Repeal	2-1-2012
331-225-0070	1-1-2012	Repeal	2-1-2012	331-560-0060	1-1-2012	Repeal	2-1-2012
331-225-0080	1-1-2012	Repeal	2-1-2012	331-565-0000	1-1-2012	Repeal	2-1-2012
331-225-0090	1-1-2012	Repeal	2-1-2012	331-565-0020	1-1-2012	Repeal	2-1-2012
331-225-0100	1-1-2012	Repeal	2-1-2012	331-565-0025	1-1-2012	Repeal	2-1-2012
331-225-0110	1-1-2012	Repeal	2-1-2012	331-565-0030	1-1-2012	Repeal	2-1-2012
331-225-0120	1-1-2012	Repeal	2-1-2012	331-565-0040	1-1-2012	Repeal	2-1-2012
331-225-0130	1-1-2012	Repeal	2-1-2012	331-565-0050	1-1-2012	Repeal	2-1-2012
331-225-0140	1-1-2012	Repeal	2-1-2012	331-565-0060	1-1-2012	Repeal	2-1-2012
331-225-0150	1-1-2012	Repeal	2-1-2012	331-565-0080	1-1-2012	Repeal	2-1-2012
331-225-0160	1-1-2012	Repeal	2-1-2012	331-565-0085	1-1-2012	Repeal	2-1-2012
331-505-0000	1-1-2012	Repeal	2-1-2012	331-565-0090	1-1-2012	Repeal	2-1-2012

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331-565-0095	1-1-2012	Repeal	2-1-2012	331-900-0010	6-25-2012	Amend	8-1-2012
331-570-0000	1-1-2012	Repeal	2-1-2012	331-900-0010(T)	6-25-2012	Repeal	8-1-2012
331-570-0020	1-1-2012	Repeal	2-1-2012	331-900-0015	1-1-2012	Adopt	2-1-2012
331-575-0000	1-1-2012	Repeal	2-1-2012	331-900-0015	3-1-2012	Amend(T)	4-1-2012
331-575-0010	1-1-2012	Repeal	2-1-2012	331-900-0015	6-25-2012	Amend	8-1-2012
331-575-0020	1-1-2012	Repeal	2-1-2012	331-900-0015(T)	6-25-2012	Repeal	8-1-2012
331-575-0030	1-1-2012	Repeal	2-1-2012	331-900-0020	1-1-2012	Adopt	2-1-2012
331-575-0040	1-1-2012	Repeal	2-1-2012	331-900-0020	3-1-2012	Amend(T)	4-1-2012
331-575-0050	1-1-2012	Repeal	2-1-2012	331-900-0020	6-25-2012	Amend	8-1-2012
331-580-0000	1-1-2012	Repeal	2-1-2012	331-900-0020(T)	6-25-2012	Repeal	8-1-2012
331-580-0010	1-1-2012	Repeal	2-1-2012	331-900-0025	1-1-2012	Adopt	2-1-2012
331-580-0020	1-1-2012	Repeal	2-1-2012	331-900-0025	6-25-2012	Amend	8-1-2012
331-580-0030	1-1-2012	Repeal	2-1-2012	331-900-0030	1-1-2012	Adopt	2-1-2012
331-585-0000	1-1-2012	Repeal	2-1-2012	331-900-0030	3-1-2012	Amend(T)	4-1-2012
331-585-0010	1-1-2012	Repeal	2-1-2012	331-900-0030	6-25-2012	Amend	8-1-2012
331-585-0020	1-1-2012	Repeal	2-1-2012	331-900-0030(T)	6-25-2012	Repeal	8-1-2012
331-585-0030	1-1-2012	Repeal	2-1-2012	331-900-0035	1-1-2012	Adopt	2-1-2012
331-585-0040	1-1-2012	Repeal	2-1-2012	331-900-0035	6-25-2012	Amend	8-1-2012
331-590-0000	1-1-2012	Repeal	2-1-2012	331-900-0040	1-1-2012	Adopt	2-1-2012
331-590-0020	1-1-2012	Repeal	2-1-2012	331-900-0040	3-1-2012	Amend(T)	4-1-2012
331-705-0050	1-1-2012	Amend	2-1-2012	331-900-0040	6-25-2012	Amend	8-1-2012
331-705-0060	1-1-2012	Repeal	2-1-2012	331-900-0040(T)	6-25-2012	Repeal	8-1-2012
331-705-0072	11-22-2011	Adopt(T)	1-1-2012	331-900-0045	1-1-2012	Adopt	2-1-2012
331-705-0072	1-1-2012	Adopt	2-1-2012	331-900-0045	6-25-2012	Amend	8-1-2012
331-705-0072(T)	1-1-2012	Repeal	2-1-2012	331-900-0050	1-1-2012	Adopt	2-1-2012
331-705-0080	1-1-2012	Adopt	2-1-2012	331-900-0055	1-1-2012	Adopt	2-1-2012
331-710-0005	1-1-2012	Adopt	2-1-2012	331-900-0060	1-1-2012	Adopt	2-1-2012
331-710-0010	1-1-2012	Amend	2-1-2012	331-900-0065	1-1-2012	Adopt	2-1-2012
331-710-0015	1-1-2012	Adopt	2-1-2012	331-900-0070	1-1-2012	Adopt	2-1-2012
331-710-0020	1-1-2012	Amend	2-1-2012	331-900-0070	3-1-2012	Amend(T)	4-1-2012
331-710-0030	1-1-2012	Repeal	2-1-2012	331-900-0070	6-25-2012	Amend	8-1-2012
331-710-0040	1-1-2012	Adopt	2-1-2012	331-900-0070(T)	6-25-2012	Repeal	8-1-2012
331-710-0045	1-1-2012	Adopt	2-1-2012	331-900-0075	1-1-2012	Adopt	2-1-2012
331-710-0050	1-1-2012	Adopt	2-1-2012	331-900-0080	1-1-2012	Adopt	2-1-2012
331-712-0000	1-1-2012	Adopt	2-1-2012	331-900-0085	1-1-2012	Adopt	2-1-2012
331-712-0010	1-1-2012	Adopt	2-1-2012	331-900-0085	3-1-2012	Amend(T)	4-1-2012
331-712-0020	1-1-2012	Adopt	2-1-2012	331-900-0085	6-25-2012	Amend	8-1-2012
331-715-0010	1-1-2012	Amend	2-1-2012	331-900-0085(T)	6-25-2012	Repeal	8-1-2012
331-715-0030	1-1-2012	Repeal	2-1-2012	331-900-0090	1-1-2012	Adopt	2-1-2012
331-715-0045	1-1-2012	Repeal	2-1-2012	331-900-0090	3-1-2012	Amend(T)	4-1-2012
331-718-0000	1-1-2012	Adopt	2-1-2012	331-900-0090	6-25-2012	Amend	8-1-2012
331-718-0010	1-1-2012	Adopt	2-1-2012	331-900-0090(T)	6-25-2012	Repeal	8-1-2012
331-718-0020	1-1-2012	Adopt	2-1-2012	331-900-0095	1-1-2012	Adopt	2-1-2012
331-720-0010	1-1-2012	Amend	2-1-2012	331-900-0095	3-1-2012	Amend(T)	4-1-2012
331-720-0015	1-1-2012	Adopt	2-1-2012	331-900-0095	6-25-2012	Amend	8-1-2012
331-725-0020	1-1-2012	Repeal	2-1-2012	331-900-0095(T)	6-25-2012	Repeal	8-1-2012
331-740-0000	1-1-2012	Adopt	2-1-2012	331-900-0097	6-25-2012	Adopt	8-1-2012
331-900-0000	1-1-2012	Adopt	2-1-2012	331-900-0098	6-25-2012	Adopt	8-1-2012
331-900-0000	3-1-2012	Amend(T)	4-1-2012	331-900-0099	6-25-2012	Adopt	8-1-2012
331-900-0000	6-25-2012	Amend	8-1-2012	331-900-0100	1-1-2012	Adopt	2-1-2012
331-900-0005	1-1-2012	Adopt	2-1-2012	331-900-0100	3-1-2012	Amend(T)	4-1-2012
331-900-0005	3-1-2012	Amend(T)	4-1-2012	331-900-0100	6-25-2012	Amend	8-1-2012
331-900-0005	6-25-2012	Amend	8-1-2012	331-900-0100(T)	6-25-2012	Repeal	8-1-2012
331-900-0005(T)	6-25-2012	Repeal	8-1-2012	331-900-0105	1-1-2012	Adopt	2-1-2012
331-900-0010	1-1-2012	Adopt	2-1-2012	331-900-0110	1-1-2012	Adopt	2-1-2012
331-900-0010	3-1-2012	Amend(T)	4-1-2012	331-900-0110	6-25-2012	Amend	8-1-2012

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331-900-0115	6-25-2012	Adopt	8-1-2012	331-905-0035(T)	3-1-2012	Suspend	4-1-2012
331-900-0120	6-25-2012	Adopt	8-1-2012	331-905-0035(T)	6-25-2012	Repeal	8-1-2012
331-900-0125	6-25-2012	Adopt	8-1-2012	331-905-0040	1-1-2012	Adopt(T)	2-1-2012
331-900-0130	6-25-2012	Adopt	8-1-2012	331-905-0040	3-1-2012	Adopt(T)	4-1-2012
331-905-0000	1-1-2012	Adopt(T)	2-1-2012	331-905-0040	6-25-2012	Adopt	8-1-2012
331-905-0000	3-1-2012	Adopt(T)	4-1-2012	331-905-0040(T)	3-1-2012	Suspend	4-1-2012
331-905-0000	6-25-2012	Adopt	8-1-2012	331-905-0040(T)	6-25-2012	Repeal	8-1-2012
331-905-0000(T)	3-1-2012	Suspend	4-1-2012	331-905-0045	1-1-2012	Adopt(T)	2-1-2012
331-905-0000(T)	6-25-2012	Repeal	8-1-2012	331-905-0045	3-1-2012	Adopt(T)	4-1-2012
331-905-0003	3-1-2012	Adopt(T)	4-1-2012	331-905-0045	6-25-2012	Adopt	8-1-2012
331-905-0003(T)	6-25-2012	Repeal	8-1-2012	331-905-0045(T)	3-1-2012	Suspend	4-1-2012
331-905-0005	1-1-2012	Adopt(T)	2-1-2012	331-905-0045(T)	6-25-2012	Repeal	8-1-2012
331-905-0005	3-1-2012	Adopt(T)	4-1-2012	331-905-0050	1-1-2012	Adopt(T)	2-1-2012
331-905-0005	6-25-2012	Adopt	8-1-2012	331-905-0050	3-1-2012	Adopt(T)	4-1-2012
331-905-0005(T)	3-1-2012	Suspend	4-1-2012	331-905-0050	6-25-2012	Adopt	8-1-2012
331-905-0005(T)	6-25-2012	Repeal	8-1-2012	331-905-0050(T)	3-1-2012	Suspend	4-1-2012
331-905-0010	1-1-2012	Adopt(T)	2-1-2012	331-905-0050(T)	6-25-2012	Repeal	8-1-2012
331-905-0010	3-1-2012	Adopt(T)	4-1-2012	331-905-0052	6-25-2012	Adopt	8-1-2012
331-905-0010	6-25-2012	Adopt	8-1-2012	331-905-0053	3-1-2012	Adopt(T)	4-1-2012
331-905-0010(T)	3-1-2012	Suspend	4-1-2012	331-905-0053(T)	6-25-2012	Repeal	8-1-2012
331-905-0010(T)	6-25-2012	Repeal	8-1-2012	331-905-0055	1-1-2012	Adopt(T)	2-1-2012
331-905-0011	6-25-2012	Adopt	8-1-2012	331-905-0055	3-1-2012	Adopt(T)	4-1-2012
331-905-0012	3-1-2012	Adopt(T)	4-1-2012	331-905-0055	6-25-2012	Adopt	8-1-2012
331-905-0012	6-25-2012	Adopt	8-1-2012	331-905-0055(T)	3-1-2012	Suspend	4-1-2012
331-905-0012(T)	6-25-2012	Repeal	8-1-2012	331-905-0055(T)	6-25-2012	Repeal	8-1-2012
331-905-0013	6-25-2012	Adopt	8-1-2012	331-905-0058	6-25-2012	Adopt	8-1-2012
331-905-0014	3-1-2012	Adopt(T)	4-1-2012	331-905-0060	1-1-2012	Adopt(T)	2-1-2012
331-905-0014	6-25-2012	Adopt	8-1-2012	331-905-0060	3-1-2012	Adopt(T)	4-1-2012
331-905-0014(T)	6-25-2012	Repeal	8-1-2012	331-905-0060	6-25-2012	Adopt	8-1-2012
331-905-0015	1-1-2012	Adopt(T)	2-1-2012	331-905-0060(T)	3-1-2012	Suspend	4-1-2012
331-905-0015	3-1-2012	Adopt(T)	4-1-2012	331-905-0060(T)	6-25-2012	Repeal	8-1-2012
331-905-0015	6-25-2012	Adopt	8-1-2012	331-905-0065	1-1-2012	Adopt(T)	2-1-2012
331-905-0015(T)	3-1-2012	Suspend	4-1-2012	331-905-0065	3-1-2012	Adopt(T)	4-1-2012
331-905-0015(T)	6-25-2012	Repeal	8-1-2012	331-905-0065(T)	6-25-2012	Repeal	8-1-2012
331-905-0020	1-1-2012	Adopt(T)	2-1-2012	331-905-0070	6-25-2012	Adopt	8-1-2012
331-905-0020	3-1-2012	Adopt(T)	4-1-2012	331-905-0075	6-25-2012	Adopt	8-1-2012
331-905-0020	6-25-2012	Adopt	8-1-2012	331-905-0080	6-25-2012	Adopt	8-1-2012
331-905-0020(T)	3-1-2012	Suspend	4-1-2012	331-905-0085	6-25-2012	Adopt	8-1-2012
331-905-0020(T)	6-25-2012	Repeal	8-1-2012	331-905-0090	6-25-2012	Adopt	8-1-2012
331-905-0025	1-1-2012	Adopt(T)	2-1-2012	331-905-0095	6-25-2012	Adopt	8-1-2012
331-905-0025	3-1-2012	Adopt(T)	4-1-2012	331-905-0100	6-25-2012	Adopt	8-1-2012
331-905-0025	6-25-2012	Adopt	8-1-2012	331-905-0105	6-25-2012	Adopt	8-1-2012
331-905-0025(T)	3-1-2012	Suspend	4-1-2012	331-905-0110	6-25-2012	Adopt	8-1-2012
331-905-0025(T)	6-25-2012	Repeal	8-1-2012	331-905-0115	6-25-2012	Adopt	8-1-2012
331-905-0030	1-1-2012	Adopt(T)	2-1-2012	331-905-0120	6-25-2012	Adopt	8-1-2012
331-905-0030	3-1-2012	Adopt(T)	4-1-2012	331-910-0000	1-1-2012	Adopt	2-1-2012
331-905-0030	6-25-2012	Adopt	8-1-2012	331-910-0000	6-25-2012	Amend	8-1-2012
331-905-0030(T)	3-1-2012	Suspend	4-1-2012	331-910-0005	1-1-2012	Adopt	2-1-2012
331-905-0030(T)	6-25-2012	Repeal	8-1-2012	331-910-0010	1-1-2012	Adopt	2-1-2012
331-905-0032	3-1-2012	Adopt(T)	4-1-2012	331-910-0010	3-1-2012	Amend(T)	4-1-2012
331-905-0032(T)	6-25-2012	Repeal	8-1-2012	331-910-0010	6-25-2012	Amend	8-1-2012
331-905-0034	3-1-2012	Adopt(T)	4-1-2012	331-910-0010(T)	6-25-2012	Repeal	8-1-2012
331-905-0034(T)	6-25-2012	Repeal	8-1-2012	331-910-0015	1-1-2012	Adopt	2-1-2012
331-905-0035	1-1-2012	Adopt(T)	2-1-2012	331-910-0015	3-1-2012	Amend(T)	4-1-2012
331-905-0035	3-1-2012	Adopt(T)	4-1-2012	331-910-0015	6-25-2012	Amend	8-1-2012
331-905-0035	6-25-2012	Adopt	8-1-2012	331-910-0015(T)	6-25-2012	Repeal	8-1-2012

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331-910-0020	1-1-2012	Adopt	2-1-2012	331-915-0025	4-20-2012	Amend(T)	6-1-2012
331-910-0020	3-1-2012	Amend(T)	4-1-2012	331-915-0025	5-3-2012	Amend(T)	6-1-2012
331-910-0020	6-25-2012	Amend	8-1-2012	331-915-0025	6-25-2012	Amend	8-1-2012
331-910-0020(T)	6-25-2012	Repeal	8-1-2012	331-915-0025(T)	6-25-2012	Repeal	8-1-2012
331-910-0025	1-1-2012	Adopt	2-1-2012	331-915-0027	3-21-2012	Adopt(T)	5-1-2012
331-910-0025	3-1-2012	Amend(T)	4-1-2012	331-915-0027	3-30-2012	Suspend	5-1-2012
331-910-0025	6-25-2012	Amend	8-1-2012	331-915-0027(T)	6-25-2012	Repeal	8-1-2012
331-910-0025(T)	6-25-2012	Repeal	8-1-2012	331-915-0029	3-21-2012	Adopt(T)	5-1-2012
331-910-0030	1-1-2012	Adopt	2-1-2012	331-915-0029	3-30-2012	Suspend	5-1-2012
331-910-0035	1-1-2012	Adopt	2-1-2012	331-915-0029(T)	6-25-2012	Repeal	8-1-2012
331-910-0040	1-1-2012	Adopt	2-1-2012	331-915-0030	1-1-2012	Adopt	2-1-2012
331-910-0040	3-1-2012	Amend(T)	4-1-2012	331-915-0035	1-1-2012	Adopt	2-1-2012
331-910-0040	6-25-2012	Amend	8-1-2012	331-915-0040	1-1-2012	Adopt	2-1-2012
331-910-0040(T)	6-25-2012	Repeal	8-1-2012	331-915-0040	3-1-2012	Amend(T)	4-1-2012
331-910-0045	1-1-2012	Adopt	2-1-2012	331-915-0040	6-25-2012	Amend	8-1-2012
331-910-0045	3-1-2012	Amend(T)	4-1-2012	331-915-0040(T)	6-25-2012	Repeal	8-1-2012
331-910-0045	6-25-2012	Amend	8-1-2012	331-915-0045	1-1-2012	Adopt	2-1-2012
331-910-0045(T)	6-25-2012	Repeal	8-1-2012	331-915-0045	3-1-2012	Amend(T)	4-1-2012
331-910-0050	1-1-2012	Adopt	2-1-2012	331-915-0045	6-25-2012	Amend	8-1-2012
331-910-0055	1-1-2012	Adopt	2-1-2012	331-915-0045(T)	6-25-2012	Repeal	8-1-2012
331-910-0055	3-1-2012	Amend(T)	4-1-2012	331-915-0050	1-1-2012	Adopt	2-1-2012
331-910-0055	6-25-2012	Amend	8-1-2012	331-915-0055	1-1-2012	Adopt	2-1-2012
331-910-0055(T)	6-25-2012	Repeal	8-1-2012	331-915-0060	1-1-2012	Adopt	2-1-2012
331-910-0060	1-1-2012	Adopt	2-1-2012	331-915-0065	1-1-2012	Adopt	2-1-2012
331-910-0065	1-1-2012	Adopt	2-1-2012	331-915-0065	6-25-2012	Amend	8-1-2012
331-910-0065	3-1-2012	Amend(T)	4-1-2012	331-915-0070	6-25-2012	Adopt	8-1-2012
331-910-0065	6-25-2012	Amend	8-1-2012	331-915-0075	6-25-2012	Adopt	8-1-2012
331-910-0065(T)	6-25-2012	Repeal	8-1-2012	331-915-0080	6-25-2012	Adopt	8-1-2012
331-910-0070	3-1-2012	Adopt(T)	4-1-2012	331-915-0085	6-25-2012	Adopt	8-1-2012
331-910-0070	6-25-2012	Adopt	8-1-2012	331-920-0000	1-1-2012	Adopt	2-1-2012
331-910-0070(T)	6-25-2012	Repeal	8-1-2012	331-920-0005	1-1-2012	Adopt	2-1-2012
331-910-0075	3-1-2012	Adopt(T)	4-1-2012	331-925-0000	1-1-2012	Adopt	2-1-2012
331-910-0075	6-25-2012	Adopt	8-1-2012	331-925-0000	3-1-2012	Amend(T)	4-1-2012
331-910-0075(T)	6-25-2012	Repeal	8-1-2012	331-925-0000	6-25-2012	Amend	8-1-2012
331-910-0080	3-1-2012	Adopt(T)	4-1-2012	331-925-0000(T)	6-25-2012	Repeal	8-1-2012
331-910-0080	6-25-2012	Adopt	8-1-2012	331-925-0005	1-1-2012	Adopt	2-1-2012
331-910-0080(T)	6-25-2012	Repeal	8-1-2012	331-925-0005	3-1-2012	Amend(T)	4-1-2012
331-910-0085	3-1-2012	Adopt(T)	4-1-2012	331-925-0005	6-25-2012	Amend	8-1-2012
331-910-0085	6-25-2012	Adopt	8-1-2012	331-925-0005(T)	6-25-2012	Repeal	8-1-2012
331-910-0085(T)	6-25-2012	Repeal	8-1-2012	331-925-0010	1-1-2012	Adopt	2-1-2012
331-915-0000	1-1-2012	Adopt	2-1-2012	331-925-0010	3-1-2012	Amend(T)	4-1-2012
331-915-0000	6-25-2012	Amend	8-1-2012	331-925-0010	6-25-2012	Amend	8-1-2012
331-915-0005	1-1-2012	Adopt	2-1-2012	331-925-0010(T)	6-25-2012	Repeal	8-1-2012
331-915-0010	1-1-2012	Adopt	2-1-2012	331-925-0015	1-1-2012	Adopt	2-1-2012
331-915-0010	3-1-2012	Amend(T)	4-1-2012	331-925-0015	3-1-2012	Amend(T)	4-1-2012
331-915-0010	6-25-2012	Amend	8-1-2012	331-925-0015	6-25-2012	Amend	8-1-2012
331-915-0010(T)	6-25-2012	Repeal	8-1-2012	331-925-0015(T)	6-25-2012	Repeal	8-1-2012
331-915-0015	1-1-2012	Adopt	2-1-2012	331-925-0020	1-1-2012	Adopt	2-1-2012
331-915-0015	3-1-2012	Amend(T)	4-1-2012	331-925-0020	3-1-2012	Amend(T)	4-1-2012
331-915-0015	6-25-2012	Amend	8-1-2012	331-925-0020	6-25-2012	Amend	8-1-2012
331-915-0015(T)	6-25-2012	Repeal	8-1-2012	331-925-0020(T)	6-25-2012	Repeal	8-1-2012
331-915-0020	1-1-2012	Adopt	2-1-2012	331-925-0025	1-1-2012	Adopt	2-1-2012
331-915-0020	3-1-2012	Amend(T)	4-1-2012	331-925-0025	3-1-2012	Amend(T)	4-1-2012
331-915-0020	6-25-2012	Amend	8-1-2012	331-925-0025	6-25-2012	Amend	8-1-2012
331-915-0020(T)	6-25-2012	Repeal	8-1-2012	331-925-0025(T)	6-25-2012	Repeal	8-1-2012
331-915-0025	1-1-2012	Adopt	2-1-2012	331-925-0030	1-1-2012	Adopt	2-1-2012

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331-925-0030	6-25-2012	Amend	8-1-2012	331-950-0050	1-1-2012	Adopt	2-1-2012
331-925-0030(T)	6-25-2012	Repeal	8-1-2012	331-950-0050	6-25-2012	Amend	8-1-2012
331-925-0035	1-1-2012	Adopt	2-1-2012	331-950-0060	1-1-2012	Adopt	2-1-2012
331-925-0035	3-1-2012	Amend(T)	4-1-2012	331-950-0060	6-25-2012	Amend	8-1-2012
331-925-0035	6-25-2012	Amend	8-1-2012	331-950-0070	1-1-2012	Adopt	2-1-2012
331-925-0035(T)	6-25-2012	Repeal	8-1-2012	331-950-0070	6-25-2012	Amend	8-1-2012
331-925-0040	1-1-2012	Adopt	2-1-2012	332-025-0120	4-12-2012	Amend(T)	4-1-2012
331-925-0040	3-1-2012	Amend(T)	4-1-2012	332-025-0120	5-10-2012	Amend(T)	6-1-2012
331-925-0040	6-25-2012	Amend	8-1-2012	332-025-0120(T)	5-10-2012	Suspend	6-1-2012
331-925-0040(T)	6-25-2012	Repeal	8-1-2012	332-040-0000	1-1-2012	Amend(T)	2-1-2012
331-925-0045	1-1-2012	Adopt	2-1-2012	332-040-0000	3-9-2012	Amend(T)	4-1-2012
331-925-0045	6-25-2012	Amend	8-1-2012	333-003-0105	4-1-2012	Amend	5-1-2012
331-925-0050	3-1-2012	Adopt(T)	4-1-2012	333-003-0110	4-1-2012	Amend	5-1-2012
331-925-0050	6-25-2012	Adopt	8-1-2012	333-003-0115	4-1-2012	Amend	5-1-2012
331-925-0050(T)	6-25-2012	Repeal	8-1-2012	333-003-0117	4-1-2012	Adopt	5-1-2012
331-925-0055	3-1-2012	Adopt(T)	4-1-2012	333-003-0118	4-1-2012	Amend	5-1-2012
331-925-0055	6-25-2012	Adopt	8-1-2012	333-003-0119	4-1-2012	Adopt	5-1-2012
331-925-0055(T)	6-25-2012	Repeal	8-1-2012	333-003-0125	4-1-2012	Amend	5-1-2012
331-930-0000	1-1-2012	Adopt	2-1-2012	333-003-0140	4-1-2012	Amend	5-1-2012
331-930-0000	3-1-2012	Amend(T)	4-1-2012	333-003-0210	4-1-2012	Amend	5-1-2012
331-930-0000	6-25-2012	Repeal	8-1-2012	333-010-0000	1-1-2012	Amend	2-1-2012
331-930-0000(T)	6-25-2012	Repeal	8-1-2012	333-010-0010	1-1-2012	Amend	2-1-2012
331-930-0005	1-1-2012	Adopt	2-1-2012	333-010-0020	1-1-2012	Amend	2-1-2012
331-930-0005	3-1-2012	Suspend	4-1-2012	333-010-0030	1-1-2012	Amend	2-1-2012
331-930-0005	6-25-2012	Repeal	8-1-2012	333-010-0032	1-1-2012	Adopt	2-1-2012
331-930-0005(T)	6-25-2012	Repeal	8-1-2012	333-010-0035	1-1-2012	Amend	2-1-2012
331-930-0010	1-1-2012	Adopt	2-1-2012	333-010-0040	1-1-2012	Amend	2-1-2012
331-930-0010	3-1-2012	Suspend	4-1-2012	333-010-0050	1-1-2012	Amend	2-1-2012
331-930-0010	6-25-2012	Repeal	8-1-2012	333-010-0055	1-1-2012	Amend	2-1-2012
331-930-0010(T)	6-25-2012	Repeal	8-1-2012	333-010-0060	1-1-2012	Amend	2-1-2012
331-930-0015	1-1-2012	Adopt	2-1-2012	333-010-0070	1-1-2012	Amend	2-1-2012
331-930-0015	3-1-2012	Amend(T)	4-1-2012	333-010-0080	1-1-2012	Amend	2-1-2012
331-930-0015	6-25-2012	Repeal	8-1-2012	333-010-0100	1-17-2012	Amend	3-1-2012
331-930-0015(T)	6-25-2012	Repeal	8-1-2012	333-010-0105	1-17-2012	Amend	3-1-2012
331-930-0020	1-1-2012	Adopt	2-1-2012	333-010-0110	1-17-2012	Amend	3-1-2012
331-930-0020	3-1-2012	Amend(T)	4-1-2012	333-010-0115	1-17-2012	Amend	3-1-2012
331-930-0020	6-25-2012	Repeal	8-1-2012	333-010-0130	1-17-2012	Amend	3-1-2012
331-930-0020(T)	6-25-2012	Repeal	8-1-2012	333-010-0197	1-17-2012	Adopt	3-1-2012
331-930-0025	1-1-2012	Adopt	2-1-2012	333-010-0340	6-11-2012	Repeal	7-1-2012
331-930-0025	3-1-2012	Amend(T)	4-1-2012	333-011-0006	1-1-2012	Amend	2-1-2012
331-930-0025	6-25-2012	Repeal	8-1-2012	333-011-0016	1-1-2012	Amend	2-1-2012
331-930-0025(T)	6-25-2012	Repeal	8-1-2012	333-011-0061	1-1-2012	Amend	2-1-2012
331-930-0030	1-1-2012	Adopt	2-1-2012	333-011-0101	1-1-2012	Amend	2-1-2012
331-930-0030	3-1-2012	Amend(T)	4-1-2012	333-012-0002	6-11-2012	Repeal	7-1-2012
331-930-0030	6-25-2012	Repeal	8-1-2012	333-012-0003	6-11-2012	Repeal	7-1-2012
331-930-0030(T)	6-25-2012	Repeal	8-1-2012	333-012-0004	6-11-2012	Repeal	7-1-2012
331-940-0000	1-1-2012	Adopt	2-1-2012	333-012-0010	6-11-2012	Repeal	7-1-2012
331-940-0000	3-5-2012	Amend(T)	4-1-2012	333-012-0035	6-11-2012	Repeal	7-1-2012
331-950-0010	1-1-2012	Adopt	2-1-2012	333-012-0040	6-11-2012	Repeal	7-1-2012
331-950-0010	6-25-2012	Amend	8-1-2012	333-012-0041	6-11-2012	Repeal	7-1-2012
331-950-0020	1-1-2012	Adopt	2-1-2012	333-012-0043	6-11-2012	Repeal	7-1-2012
331-950-0020	6-25-2012	Amend	8-1-2012	333-012-0045	6-11-2012	Repeal	7-1-2012
331-950-0030	1-1-2012	Adopt	2-1-2012	333-012-0053	3-1-2012	Amend	4-1-2012
331-950-0030	6-25-2012	Amend	8-1-2012	333-012-0055	3-1-2012	Amend	4-1-2012
331-950-0040	1-1-2012	Adopt	2-1-2012	333-013-0001	6-11-2012	Repeal	7-1-2012

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333-013-0100	6-11-2012	Repeal	7-1-2012	333-047-0050	1-1-2012	Adopt	2-1-2012
333-015-0025	2-1-2012	Amend	3-1-2012	333-049-0010	1-1-2012	Amend	2-1-2012
333-015-0030	2-1-2012	Amend	3-1-2012	333-049-0040	1-1-2012	Amend	2-1-2012
333-015-0035	2-1-2012	Amend	3-1-2012	333-049-0050	1-1-2012	Amend	2-1-2012
333-015-0040	2-1-2012	Amend	3-1-2012	333-049-0065	1-1-2012	Amend	2-1-2012
333-015-0045	2-1-2012	Amend	3-1-2012	333-049-0070	1-1-2012	Amend	2-1-2012
333-015-0064	2-1-2012	Amend	3-1-2012	333-049-0090	1-1-2012	Amend	2-1-2012
333-015-0066	2-1-2012	Amend	3-1-2012	333-052-0030	6-11-2012	Amend(T)	7-1-2012
333-015-0068	2-1-2012	Amend	3-1-2012	333-052-0040	6-11-2012	Amend(T)	7-1-2012
333-015-0069	2-1-2012	Amend	3-1-2012	333-052-0041	6-11-2012	Adopt(T)	7-1-2012
333-015-0070	2-1-2012	Amend	3-1-2012	333-052-0042	6-11-2012	Adopt(T)	7-1-2012
333-015-0075	2-1-2012	Amend	3-1-2012	333-052-0100	6-11-2012	Amend(T)	7-1-2012
333-015-0080	2-1-2012	Amend	3-1-2012	333-076-0001	4-1-2012	Adopt	5-1-2012
333-015-0082	2-1-2012	Amend	3-1-2012	333-076-0185	4-1-2012	Amend	5-1-2012
333-015-0085	2-1-2012	Amend	3-1-2012	333-157-0073	3-1-2012	Adopt	4-1-2012
333-015-0090	2-1-2012	Repeal	3-1-2012	333-157-0077	3-1-2012	Adopt	4-1-2012
333-019-0041	12-14-2011	Amend	1-1-2012	333-250-0051	7-1-2012	Adopt(T)	8-1-2012
333-019-0042	12-14-2011	Adopt	1-1-2012	333-265-0000	1-1-2012	Amend	2-1-2012
333-021-0150	6-11-2012	Repeal	7-1-2012	333-265-0010	1-1-2012	Amend	2-1-2012
333-021-0500	6-11-2012	Repeal	7-1-2012	333-265-0012	1-1-2012	Amend	2-1-2012
333-021-0600	6-11-2012	Repeal	7-1-2012	333-265-0014	1-1-2012	Amend	2-1-2012
333-027-0000	4-1-2012	Amend	5-1-2012	333-265-0015	1-1-2012	Amend	2-1-2012
333-027-0005	4-1-2012	Amend	5-1-2012	333-265-0016	1-1-2012	Amend	2-1-2012
333-027-0010	4-1-2012	Amend	5-1-2012	333-265-0018	1-1-2012	Amend	2-1-2012
333-027-0015	4-1-2012	Amend	5-1-2012	333-265-0020	1-1-2012	Amend	2-1-2012
333-027-0017	4-1-2012	Adopt	5-1-2012	333-265-0022	1-1-2012	Amend	2-1-2012
333-027-0018	4-1-2012	Adopt	5-1-2012	333-265-0023	1-1-2012	Amend	2-1-2012
333-027-0020	4-1-2012	Amend	5-1-2012	333-265-0025	1-1-2012	Amend	2-1-2012
333-027-0025	4-1-2012	Amend	5-1-2012	333-265-0030	1-1-2012	Amend	2-1-2012
333-027-0029	4-1-2012	Adopt	5-1-2012	333-265-0040	1-1-2012	Amend	2-1-2012
333-027-0030	4-1-2012	Repeal	5-1-2012	333-265-0050	1-1-2012	Amend	2-1-2012
333-027-0033	4-1-2012	Adopt	5-1-2012	333-265-0060	1-1-2012	Amend	2-1-2012
333-027-0035	4-1-2012	Repeal	5-1-2012	333-265-0070	1-1-2012	Amend	2-1-2012
333-027-0036	4-1-2012	Adopt	5-1-2012	333-265-0080	1-1-2012	Amend	2-1-2012
333-027-0037	4-1-2012	Adopt	5-1-2012	333-265-0083	1-1-2012	Amend	2-1-2012
333-027-0038	4-1-2012	Adopt	5-1-2012	333-265-0085	1-1-2012	Amend	2-1-2012
333-027-0040	4-1-2012	Amend	5-1-2012	333-265-0087	1-1-2012	Amend	2-1-2012
333-027-0050	4-1-2012	Amend	5-1-2012	333-265-0090	1-1-2012	Amend	2-1-2012
333-027-0060	4-1-2012	Amend	5-1-2012	333-265-0100	1-1-2012	Amend	2-1-2012
333-027-0064	4-1-2012	Adopt	5-1-2012	333-265-0105	1-1-2012	Amend	2-1-2012
333-027-0080	4-1-2012	Amend	5-1-2012	333-265-0110	1-1-2012	Amend	2-1-2012
333-027-0090	4-1-2012	Amend	5-1-2012	333-265-0140	1-1-2012	Amend	2-1-2012
333-027-0100	4-1-2012	Amend	5-1-2012	333-265-0150	1-1-2012	Amend	2-1-2012
333-027-0110	4-1-2012	Amend	5-1-2012	333-265-0160	1-1-2012	Amend	2-1-2012
333-027-0120	4-1-2012	Amend	5-1-2012	333-265-0170	1-1-2012	Amend	2-1-2012
333-027-0130	4-1-2012	Amend	5-1-2012	333-536-0000	7-1-2012	Amend	8-1-2012
333-027-0140	4-1-2012	Amend	5-1-2012	333-536-0005	7-1-2012	Amend	8-1-2012
333-027-0150	4-1-2012	Amend	5-1-2012	333-536-0007	7-1-2012	Adopt	8-1-2012
333-027-0170	4-1-2012	Amend	5-1-2012	333-536-0010	7-1-2012	Amend	8-1-2012
333-027-0175	4-1-2012	Adopt	5-1-2012	333-536-0015	7-1-2012	Amend	8-1-2012
333-027-0180	4-1-2012	Adopt	5-1-2012	333-536-0020	7-1-2012	Repeal	8-1-2012
333-027-0185	4-1-2012	Adopt	5-1-2012	333-536-0021	7-1-2012	Adopt	8-1-2012
333-027-0190	4-1-2012	Adopt	5-1-2012	333-536-0023	7-1-2012	Adopt	8-1-2012
333-047-0010	1-1-2012	Adopt	2-1-2012	333-536-0025	7-1-2012	Amend	8-1-2012
333-047-0030	1-1-2012	Adopt	2-1-2012	333-536-0030	7-1-2012	Repeal	8-1-2012

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333-536-0033	7-1-2012	Adopt	8-1-2012	333-700-0100	4-1-2012	Amend	5-1-2012
333-536-0035	7-1-2012	Amend	8-1-2012	333-700-0105	4-1-2012	Amend	5-1-2012
333-536-0040	7-1-2012	Repeal	8-1-2012	333-700-0110	4-1-2012	Amend	5-1-2012
333-536-0041	7-1-2012	Adopt	8-1-2012	333-700-0115	4-1-2012	Amend	5-1-2012
333-536-0042	7-1-2012	Adopt	8-1-2012	333-700-0120	4-1-2012	Amend	5-1-2012
333-536-0043	7-1-2012	Adopt	8-1-2012	333-700-0125	4-1-2012	Amend	5-1-2012
333-536-0045	7-1-2012	Amend	8-1-2012	333-700-0130	4-1-2012	Amend	5-1-2012
333-536-0050	7-1-2012	Amend	8-1-2012	334-001-0000	1-1-2012	Amend	1-1-2012
333-536-0055	7-1-2012	Amend	8-1-2012	334-001-0005	1-1-2012	Amend	1-1-2012
333-536-0060	7-1-2012	Amend	8-1-2012	334-001-0020	1-1-2012	Amend	1-1-2012
333-536-0065	7-1-2012	Amend	8-1-2012	334-001-0025	1-1-2012	Adopt	1-1-2012
333-536-0070	7-1-2012	Amend	8-1-2012	334-001-0028	1-1-2012	Adopt	1-1-2012
333-536-0075	7-1-2012	Amend	8-1-2012	334-001-0032	1-1-2012	Adopt	1-1-2012
333-536-0080	7-1-2012	Amend	8-1-2012	334-001-0035	1-1-2012	Repeal	1-1-2012
333-536-0085	7-1-2012	Amend	8-1-2012	334-001-0036	1-1-2012	Adopt	1-1-2012
333-536-0090	7-1-2012	Amend	8-1-2012	334-001-0060	1-1-2012	Amend	1-1-2012
333-536-0093	7-1-2012	Adopt	8-1-2012	334-010-0005	1-1-2012	Amend	1-1-2012
333-536-0095	7-1-2012	Amend	8-1-2012	334-010-0008	1-1-2012	Amend	1-1-2012
333-536-0105	7-1-2012	Amend	8-1-2012	334-010-0009	1-1-2012	Adopt	1-1-2012
333-536-0110	7-1-2012	Adopt	8-1-2012	334-010-0009	7-1-2012	Amend	8-1-2012
333-536-0115	7-1-2012	Repeal	8-1-2012	334-010-0010	1-1-2012	Amend	1-1-2012
333-536-0117	7-1-2012	Adopt	8-1-2012	334-010-0012	1-1-2012	Amend	1-1-2012
333-536-0120	7-1-2012	Adopt	8-1-2012	334-010-0015	1-1-2012	Amend	1-1-2012
333-536-0125	7-1-2012	Adopt	8-1-2012	334-010-0015	7-1-2012	Amend	8-1-2012
333-700-0000	4-1-2012	Amend	5-1-2012	334-010-0017	1-1-2012	Amend	1-1-2012
333-700-0004	4-1-2012	Adopt	5-1-2012	334-010-0018	1-1-2012	Adopt	1-1-2012
333-700-0005	4-1-2012	Amend	5-1-2012	334-010-0018	7-1-2012	Amend	8-1-2012
333-700-0010	4-1-2012	Amend	5-1-2012	334-010-0025	1-1-2012	Amend	1-1-2012
333-700-0015	4-1-2012	Amend	5-1-2012	334-010-0027	1-1-2012	Adopt	1-1-2012
333-700-0017	4-1-2012	Adopt	5-1-2012	334-010-0028	7-1-2012	Adopt	8-1-2012
333-700-0018	4-1-2012	Adopt	5-1-2012	334-010-0029	7-1-2012	Adopt	8-1-2012
333-700-0019	4-1-2012	Adopt	5-1-2012	334-010-0033	1-1-2012	Amend	1-1-2012
333-700-0020	4-1-2012	Amend	5-1-2012	334-010-0033	7-1-2012	Amend	8-1-2012
333-700-0025	4-1-2012	Amend	5-1-2012	334-010-0046	1-1-2012	Amend	1-1-2012
333-700-0030	4-1-2012	Amend	5-1-2012	334-010-0050	1-1-2012	Amend	1-1-2012
333-700-0035	4-1-2012	Amend	5-1-2012	334-020-0015	1-1-2012	Amend	1-1-2012
333-700-0040	4-1-2012	Amend	5-1-2012	334-030-0001	1-1-2012	Amend	1-1-2012
333-700-0045	4-1-2012	Amend	5-1-2012	334-030-0005	1-1-2012	Amend	1-1-2012
333-700-0050	4-1-2012	Amend	5-1-2012	334-040-0001	1-1-2012	Amend	1-1-2012
333-700-0053	4-1-2012	Adopt	5-1-2012	334-040-0010	1-1-2012	Amend	1-1-2012
333-700-0055	4-1-2012	Repeal	5-1-2012	335-060-0006	2-23-2012	Amend	4-1-2012
333-700-0057	4-1-2012	Adopt	5-1-2012	335-060-0007	2-23-2012	Amend	4-1-2012
333-700-0060	4-1-2012	Amend	5-1-2012	335-060-0010	2-23-2012	Amend	4-1-2012
333-700-0061	4-1-2012	Adopt	5-1-2012	337-010-0030	1-12-2012	Amend	2-1-2012
333-700-0062	4-1-2012	Adopt	5-1-2012	337-010-0045	5-1-2012	Amend	6-1-2012
333-700-0063	4-1-2012	Adopt	5-1-2012	339-010-0012	9-1-2012	Amend	8-1-2012
333-700-0064	4-1-2012	Adopt	5-1-2012	339-010-0013	9-1-2012	Adopt	8-1-2012
333-700-0065	4-1-2012	Amend	5-1-2012	340-041-0002	5-21-2012	Amend	7-1-2012
333-700-0070	4-1-2012	Repeal	5-1-2012	340-041-0185	5-21-2012	Amend	7-1-2012
333-700-0072	4-1-2012	Adopt	5-1-2012	340-041-0310	5-21-2012	Amend	7-1-2012
333-700-0073	4-1-2012	Adopt	5-1-2012	340-041-0315	5-21-2012	Amend	7-1-2012
333-700-0075	4-1-2012	Amend	5-1-2012	340-045-0100	11-18-2011	Amend	1-1-2012
333-700-0080	4-1-2012	Amend	5-1-2012	340-098-0000	6-26-2012	Adopt	8-1-2012
333-700-0085	4-1-2012	Amend	5-1-2012	340-098-0010	6-26-2012	Adopt	8-1-2012
333-700-0090	4-1-2012	Amend	5-1-2012	340-098-0100	6-26-2012	Adopt	8-1-2012

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340-098-0200	6-26-2012	Adopt	8-1-2012	345-024-0620	5-15-2012	Amend	6-1-2012
340-200-0020	5-17-2012	Amend	7-1-2012	345-024-0630	5-15-2012	Amend	6-1-2012
340-200-0040	12-21-2011	Amend	2-1-2012	345-024-0640	5-15-2012	Amend	6-1-2012
340-200-0040	5-17-2012	Amend	7-1-2012	345-024-0680	5-15-2012	Amend	6-1-2012
340-204-0010	12-21-2011	Amend	2-1-2012	345-024-0710	5-15-2012	Amend	6-1-2012
340-204-0030	12-21-2011	Amend	2-1-2012	345-024-0720	5-15-2012	Amend	6-1-2012
340-204-0040	12-21-2011	Amend	2-1-2012	345-026-0080	5-15-2012	Amend	6-1-2012
340-210-0100	5-17-2012	Amend	7-1-2012	345-026-0170	5-15-2012	Amend	6-1-2012
340-210-0110	5-17-2012	Amend	7-1-2012	345-027-0020	5-15-2012	Amend	6-1-2012
340-210-0120	5-17-2012	Amend	7-1-2012	345-027-0023	5-15-2012	Amend	6-1-2012
340-210-0250	5-17-2012	Amend	7-1-2012	345-027-0028	5-15-2012	Amend	6-1-2012
340-215-0060	7-2-2012	Amend	8-1-2012	345-027-0030	5-15-2012	Amend	6-1-2012
340-220-0030	7-2-2012	Amend	8-1-2012	345-027-0050	5-15-2012	Amend	6-1-2012
340-220-0040	7-2-2012	Amend	8-1-2012	345-027-0060	5-15-2012	Amend	6-1-2012
340-220-0050	7-2-2012	Amend	8-1-2012	345-027-0070	5-15-2012	Amend	6-1-2012
340-228-0020	5-17-2012	Amend	7-1-2012	345-027-0080	5-15-2012	Amend	6-1-2012
340-228-0200	5-17-2012	Amend	7-1-2012	345-027-0090	5-15-2012	Amend	6-1-2012
340-228-0210	5-17-2012	Amend	7-1-2012	345-027-0100	5-15-2012	Amend	6-1-2012
340-262-0450	5-17-2012	Amend	7-1-2012	345-027-0110	5-15-2012	Amend	6-1-2012
340-262-0600	5-17-2012	Amend	7-1-2012	345-027-0210	5-15-2012	Amend	6-1-2012
345-001-0005	5-15-2012	Amend	6-1-2012	345-027-0220	5-15-2012	Amend	6-1-2012
345-001-0010	5-15-2012	Amend	6-1-2012	345-027-0230	5-15-2012	Amend	6-1-2012
345-001-0050	5-15-2012	Amend	6-1-2012	350-081-0020	6-1-2012	Amend	6-1-2012
345-011-0020	5-15-2012	Amend	6-1-2012	350-081-0036	6-1-2012	Amend	6-1-2012
345-011-0050	5-15-2012	Amend	6-1-2012	350-081-0038	6-1-2012	Amend	6-1-2012
345-015-0014	5-15-2012	Amend	6-1-2012	350-081-0042	6-1-2012	Amend	6-1-2012
345-015-0085	5-15-2012	Amend	6-1-2012	350-081-0054	6-1-2012	Amend	6-1-2012
345-015-0110	5-15-2012	Amend	6-1-2012	350-081-0082	6-1-2012	Amend	6-1-2012
345-015-0120	5-15-2012	Amend	6-1-2012	350-081-0190	6-1-2012	Amend	6-1-2012
345-015-0160	5-15-2012	Amend	6-1-2012	350-081-0370	6-1-2012	Amend	6-1-2012
345-015-0180	5-15-2012	Amend	6-1-2012	350-081-0550	6-1-2012	Amend	6-1-2012
345-015-0190	5-15-2012	Amend	6-1-2012	350-081-0600	6-1-2012	Amend	6-1-2012
345-015-0220	5-15-2012	Amend	6-1-2012	350-081-0620	6-1-2012	Amend	6-1-2012
345-015-0230	5-15-2012	Amend	6-1-2012	407-007-0200	2-27-2012	Amend(T)	4-1-2012
345-015-0240	5-15-2012	Amend	6-1-2012	407-007-0210	2-27-2012	Amend(T)	4-1-2012
345-015-0300	5-15-2012	Amend	6-1-2012	407-007-0215	2-27-2012	Adopt(T)	4-1-2012
345-015-0310	5-15-2012	Amend	6-1-2012	407-007-0220	2-27-2012	Amend(T)	4-1-2012
345-020-0011	5-15-2012	Amend	6-1-2012	407-007-0220	4-13-2012	Amend(T)	5-1-2012
345-020-0016	5-15-2012	Amend	6-1-2012	407-007-0220(T)	4-13-2012	Suspend	5-1-2012
345-020-0040	5-15-2012	Amend	6-1-2012	407-007-0230	2-27-2012	Amend(T)	4-1-2012
345-021-0000	5-15-2012	Amend	6-1-2012	407-007-0240	2-27-2012	Amend(T)	4-1-2012
345-021-0010	5-15-2012	Amend	6-1-2012	407-007-0250	2-27-2012	Amend(T)	4-1-2012
345-021-0050	5-15-2012	Amend	6-1-2012	407-007-0275	2-27-2012	Amend(T)	4-1-2012
345-021-0055	5-15-2012	Amend	6-1-2012	407-007-0275	4-13-2012	Amend(T)	5-1-2012
345-021-0090	5-15-2012	Amend	6-1-2012	407-007-0275(T)	4-13-2012	Suspend	5-1-2012
345-022-0020	5-15-2012	Amend	6-1-2012	407-007-0277	4-13-2012	Adopt(T)	5-1-2012
345-023-0005	5-15-2012	Amend	6-1-2012	407-007-0280	2-27-2012	Amend(T)	4-1-2012
345-023-0030	5-15-2012	Amend	6-1-2012	407-007-0290	2-27-2012	Amend(T)	4-1-2012
345-023-0040	5-15-2012	Amend	6-1-2012	407-007-0300	2-27-2012	Amend(T)	4-1-2012
345-024-0015	5-15-2012	Amend	6-1-2012	407-007-0315	2-27-2012	Amend(T)	4-1-2012
345-024-0550	5-15-2012	Amend	6-1-2012	407-007-0320	2-27-2012	Amend(T)	4-1-2012
345-024-0560	5-15-2012	Amend	6-1-2012	407-007-0325	2-27-2012	Amend(T)	4-1-2012
345-024-0570	5-15-2012	Amend	6-1-2012	407-007-0330	2-27-2012	Amend(T)	4-1-2012
345-024-0590	5-15-2012	Amend	6-1-2012	407-007-0335	2-27-2012	Amend(T)	4-1-2012
345-024-0600	5-15-2012	Amend	6-1-2012	407-007-0340	2-27-2012	Amend(T)	4-1-2012

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407-007-0370	2-27-2012	Amend(T)	4-1-2012	407-120-0200	12-27-2011	Amend	2-1-2012
407-014-0000	12-16-2011	Amend	2-1-2012	407-120-0200(T)	12-27-2011	Repeal	2-1-2012
407-014-0000(T)	12-16-2011	Repeal	2-1-2012	409-025-0100	6-1-2012	Amend	7-1-2012
407-014-0015	12-16-2011	Adopt	2-1-2012	409-025-0100	6-1-2012	Amend(T)	7-1-2012
407-014-0015(T)	12-16-2011	Repeal	2-1-2012	409-025-0100	7-9-2012	Amend	8-1-2012
407-014-0020	12-16-2011	Amend	2-1-2012	409-025-0100(T)	7-9-2012	Repeal	8-1-2012
407-014-0020(T)	12-16-2011	Repeal	2-1-2012	409-025-0110	6-1-2012	Amend	7-1-2012
407-014-0030	12-16-2011	Amend	2-1-2012	409-025-0110	6-1-2012	Amend(T)	7-1-2012
407-014-0030(T)	12-16-2011	Repeal	2-1-2012	409-025-0110	7-9-2012	Amend	8-1-2012
407-014-0040	12-16-2011	Amend	2-1-2012	409-025-0110(T)	7-9-2012	Repeal	8-1-2012
407-014-0040(T)	12-16-2011	Repeal	2-1-2012	409-025-0120	6-1-2012	Amend	7-1-2012
407-014-0050	12-16-2011	Amend	2-1-2012	409-025-0130	6-1-2012	Amend	7-1-2012
407-014-0050(T)	12-16-2011	Repeal	2-1-2012	409-025-0160	6-1-2012	Amend	7-1-2012
407-014-0060	12-16-2011	Amend	2-1-2012	409-045-0000	1-11-2012	Adopt(T)	2-1-2012
407-014-0060(T)	12-16-2011	Repeal	2-1-2012	409-045-0000	5-1-2012	Amend	6-1-2012
407-014-0070	12-16-2011	Amend	2-1-2012	409-045-0000(T)	5-1-2012	Repeal	6-1-2012
407-014-0070(T)	12-16-2011	Repeal	2-1-2012	409-050-0110	12-1-2011	Amend	1-1-2012
407-014-0300	2-1-2012	Amend	3-1-2012	409-050-0110(T)	12-1-2011	Repeal	1-1-2012
407-014-0300(T)	2-1-2012	Repeal	3-1-2012	409-050-0120	12-1-2011	Amend	1-1-2012
407-014-0305	2-1-2012	Amend	3-1-2012	409-050-0120(T)	12-1-2011	Repeal	1-1-2012
407-014-0305(T)	2-1-2012	Repeal	3-1-2012	409-050-0130	12-22-2011	Amend	2-1-2012
407-014-0310	2-1-2012	Amend	3-1-2012	409-050-0130(T)	12-22-2011	Repeal	2-1-2012
407-014-0310(T)	2-1-2012	Repeal	3-1-2012	409-055-0000	3-1-2012	Amend	4-1-2012
407-014-0315	2-1-2012	Amend	3-1-2012	409-055-0000(T)	3-1-2012	Repeal	4-1-2012
407-014-0315(T)	2-1-2012	Repeal	3-1-2012	409-055-0010	3-1-2012	Amend	4-1-2012
407-014-0320	2-1-2012	Amend	3-1-2012	409-055-0010(T)	3-1-2012	Repeal	4-1-2012
407-014-0320(T)	2-1-2012	Repeal	3-1-2012	409-055-0020	3-1-2012	Amend	4-1-2012
407-043-0020	12-27-2011	Adopt	2-1-2012	409-055-0020(T)	3-1-2012	Repeal	4-1-2012
407-043-0020(T)	12-27-2011	Repeal	2-1-2012	409-055-0030	3-1-2012	Amend	4-1-2012
407-045-0250	12-5-2011	Amend	1-1-2012	409-055-0030(T)	3-1-2012	Repeal	4-1-2012
407-045-0260	12-5-2011	Amend	1-1-2012	409-055-0040	3-1-2012	Amend	4-1-2012
407-045-0280	12-5-2011	Amend	1-1-2012	409-055-0040(T)	3-1-2012	Repeal	4-1-2012
407-045-0290	12-5-2011	Amend	1-1-2012	409-055-0050	3-1-2012	Amend	4-1-2012
407-045-0320	12-5-2011	Amend	1-1-2012	409-055-0050(T)	3-1-2012	Repeal	4-1-2012
407-045-0400	12-1-2011	Amend	1-1-2012	409-055-0060	3-1-2012	Amend	4-1-2012
407-045-0400(T)	12-1-2011	Repeal	1-1-2012	409-055-0060(T)	3-1-2012	Repeal	4-1-2012
407-045-0410	12-1-2011	Repeal	1-1-2012	409-055-0070	3-1-2012	Amend	4-1-2012
407-045-0420	12-1-2011	Repeal	1-1-2012	409-055-0070(T)	3-1-2012	Repeal	4-1-2012
407-045-0430	12-1-2011	Repeal	1-1-2012	409-055-0080	3-1-2012	Amend	4-1-2012
407-045-0440	12-1-2011	Repeal	1-1-2012	409-055-0080(T)	3-1-2012	Repeal	4-1-2012
407-045-0450	12-1-2011	Repeal	1-1-2012	409-055-0090	3-1-2012	Adopt	4-1-2012
407-045-0460	12-1-2011	Repeal	1-1-2012	410-050-0100	7-1-2012	Amend(T)	8-1-2012
407-045-0470	12-1-2011	Repeal	1-1-2012	410-050-0110	7-1-2012	Amend(T)	8-1-2012
407-045-0480	12-1-2011	Repeal	1-1-2012	410-050-0861	1-1-2012	Amend(T)	2-1-2012
407-045-0490	12-1-2011	Repeal	1-1-2012	410-050-0861	3-1-2012	Amend	4-1-2012
407-045-0500	12-1-2011	Repeal	1-1-2012	410-050-0861(T)	3-1-2012	Repeal	4-1-2012
407-045-0510	12-1-2011	Repeal	1-1-2012	410-120-0000	1-1-2012	Amend	1-1-2012
407-045-0520	12-1-2011	Repeal	1-1-2012	410-120-0000	3-16-2012	Amend(T)	5-1-2012
407-120-0100	12-27-2011	Amend	2-1-2012	410-120-0000	7-1-2012	Amend	8-1-2012
407-120-0100(T)	12-27-2011	Repeal	2-1-2012	410-120-0000(T)	7-1-2012	Repeal	8-1-2012
407-120-0112	12-27-2011	Amend	2-1-2012	410-120-0006	1-1-2012	Amend	1-1-2012
407-120-0112(T)	12-27-2011	Repeal	2-1-2012	410-120-0006	1-13-2012	Amend(T)	2-1-2012
407-120-0114	12-27-2011	Amend	2-1-2012	410-120-0006	1-26-2012	Amend(T)	3-1-2012
407-120-0114(T)	12-27-2011	Repeal	2-1-2012	410-120-0006	1-31-2012	Amend(T)	3-1-2012
407-120-0150	12-27-2011	Amend	2-1-2012	410-120-0006	2-1-2012	Amend(T)	3-1-2012

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410-120-0006	4-1-2012	Amend(T)	5-1-2012	410-121-2010	3-13-2012	Amend	4-1-2012
410-120-0006	5-1-2012	Amend(T)	6-1-2012	410-121-2020	3-13-2012	Amend	4-1-2012
410-120-0006(T)	1-1-2012	Repeal	1-1-2012	410-121-2030	3-13-2012	Amend	4-1-2012
410-120-0006(T)	1-26-2012	Suspend	3-1-2012	410-121-2050	3-13-2012	Amend	4-1-2012
410-120-0006(T)	3-1-2012	Suspend	4-1-2012	410-121-2065	3-13-2012	Amend	4-1-2012
410-120-0006(T)	4-1-2012	Suspend	5-1-2012	410-122-0186	1-1-2012	Amend	2-1-2012
410-120-0006(T)	5-1-2012	Suspend	6-1-2012	410-122-0186	7-1-2012	Amend(T)	8-1-2012
410-120-0025	7-1-2012	Amend	8-1-2012	410-122-0186(T)	1-1-2012	Repeal	2-1-2012
410-120-0027	7-1-2012	Repeal	8-1-2012	410-122-0188	1-1-2012	Adopt	2-1-2012
410-120-0030	4-1-2012	Amend	5-1-2012	410-122-0325	7-1-2012	Amend(T)	8-1-2012
410-120-0250	7-1-2012	Amend	8-1-2012	410-122-0340	4-1-2012	Amend	5-1-2012
410-120-1160	1-1-2012	Amend	1-1-2012	410-122-0520	1-1-2012	Amend	2-1-2012
410-120-1200	1-1-2012	Amend	1-1-2012	410-122-0540	4-1-2012	Amend	5-1-2012
410-120-1210	1-1-2012	Amend	1-1-2012	410-122-0630	1-1-2012	Amend	2-1-2012
410-120-1260	7-1-2012	Amend	8-1-2012	410-122-0630	4-1-2012	Amend	5-1-2012
410-120-1295	3-22-2012	Amend	5-1-2012	410-122-0630(T)	1-1-2012	Repeal	2-1-2012
410-120-1295(T)	3-22-2012	Repeal	5-1-2012	410-122-0660	4-1-2012	Amend	5-1-2012
410-120-1340	1-1-2012	Amend	1-1-2012	410-123-1000	1-1-2012	Amend	2-1-2012
410-120-1340	7-1-2012	Amend	8-1-2012	410-123-1060	1-1-2012	Amend	2-1-2012
410-120-1340(T)	1-1-2012	Repeal	1-1-2012	410-123-1060	1-1-2012	Amend	2-1-2012
410-120-1395	7-1-2012	Amend	8-1-2012	410-123-1220	1-1-2012	Amend	2-1-2012
410-120-1510	1-1-2012	Amend	1-1-2012	410-123-1220	1-1-2012	Amend	2-1-2012
410-120-1860	2-1-2012	Amend(T)	3-1-2012	410-123-1260	1-1-2012	Amend	2-1-2012
410-120-1860	7-1-2012	Amend	8-1-2012	410-123-1260	1-1-2012	Amend	2-1-2012
410-120-1860(T)	7-1-2012	Repeal	8-1-2012	410-123-1490	1-1-2012	Amend	2-1-2012
410-120-1920	1-1-2012	Amend	1-1-2012	410-123-1490	1-1-2012	Amend	2-1-2012
410-120-1960	1-1-2012	Amend	1-1-2012	410-125-0045	1-1-2012	Amend	1-1-2012
410-121-0000	1-1-2012	Amend	2-1-2012	410-125-0047	1-1-2012	Amend	1-1-2012
410-121-0030	1-1-2012	Amend	2-1-2012	410-125-0080	1-1-2012	Amend	1-1-2012
410-121-0030	3-16-2012	Amend(T)	5-1-2012	410-125-0085	1-1-2012	Amend	1-1-2012
410-121-0030	4-9-2012	Amend	5-1-2012	410-125-0120	7-1-2012	Amend	8-1-2012
410-121-0030	5-14-2012	Amend	6-1-2012	410-125-0140	1-1-2012	Amend	1-1-2012
410-121-0030	6-21-2012	Amend	8-1-2012	410-125-0145	7-1-2012	Repeal	8-1-2012
410-121-0030(T)	4-9-2012	Repeal	5-1-2012	410-125-0150	7-1-2012	Amend	8-1-2012
410-121-0032	1-1-2012	Amend	2-1-2012	410-125-0155	7-1-2012	Amend	8-1-2012
410-121-0033	3-16-2012	Amend(T)	5-1-2012	410-125-0195	1-1-2012	Amend(T)	2-1-2012
410-121-0040	1-1-2012	Amend	2-1-2012	410-125-0195	7-1-2012	Amend	8-1-2012
410-121-0040	3-16-2012	Amend(T)	5-1-2012	410-125-0220	1-1-2012	Amend	1-1-2012
410-121-0040	4-9-2012	Amend	5-1-2012	410-125-0410	7-1-2012	Amend	8-1-2012
410-121-0040	4-20-2012	Amend(T)	6-1-2012	410-125-0450	1-1-2012	Amend(T)	2-1-2012
410-121-0040	5-14-2012	Amend(T)	6-1-2012	410-125-0450	7-1-2012	Amend	8-1-2012
410-121-0040	6-21-2012	Amend	8-1-2012	410-127-0060	1-1-2012	Amend	1-1-2012
410-121-0040(T)	4-9-2012	Repeal	5-1-2012	410-130-0000	1-1-2012	Amend	2-1-2012
410-121-0040(T)	5-14-2012	Suspend	6-1-2012	410-130-0200	1-1-2012	Amend	2-1-2012
410-121-0040(T)	6-21-2012	Repeal	8-1-2012	410-130-0220	1-1-2012	Amend	2-1-2012
410-121-0061	1-1-2012	Amend	2-1-2012	410-130-0255	1-1-2012	Amend	2-1-2012
410-121-0100	3-16-2012	Amend(T)	5-1-2012	410-130-0368	1-1-2012	Amend	2-1-2012
410-121-0111	3-16-2012	Adopt(T)	5-1-2012	410-130-0595	1-1-2012	Amend	2-1-2012
410-121-0146	1-1-2012	Amend	2-1-2012	410-130-0595(T)	1-1-2012	Repeal	2-1-2012
410-121-0147	1-1-2012	Amend	2-1-2012	410-131-0040	1-1-2012	Amend	1-1-2012
410-121-0160	1-1-2012	Amend	2-1-2012	410-131-0060	1-1-2012	Repeal	1-1-2012
410-121-0160(T)	1-1-2012	Repeal	2-1-2012	410-131-0080	1-1-2012	Amend	1-1-2012
410-121-0185	1-1-2012	Amend	2-1-2012	410-131-0100	1-1-2012	Amend	1-1-2012
410-121-0190	1-1-2012	Amend	2-1-2012	410-131-0120	1-1-2012	Amend	1-1-2012
410-121-2000	3-13-2012	Amend	4-1-2012	410-131-0140	1-1-2012	Repeal	1-1-2012

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410-131-0180	1-1-2012	Repeal	1-1-2012	410-141-3355	3-20-2012	Adopt(T)	5-1-2012
410-131-0200	1-1-2012	Repeal	1-1-2012	410-141-3360	3-20-2012	Adopt(T)	5-1-2012
410-131-0270	1-1-2012	Repeal	1-1-2012	410-141-3365	3-20-2012	Adopt(T)	5-1-2012
410-131-0275	1-1-2012	Repeal	1-1-2012	410-141-3370	3-20-2012	Adopt(T)	5-1-2012
410-131-0280	1-1-2012	Repeal	1-1-2012	410-141-3375	3-20-2012	Adopt(T)	5-1-2012
410-140-0080	12-6-2011	Amend	1-1-2012	410-141-3380	3-20-2012	Adopt(T)	5-1-2012
410-140-0260	12-6-2011	Amend	1-1-2012	410-141-3385	3-20-2012	Adopt(T)	5-1-2012
410-140-0400	12-6-2011	Amend	1-1-2012	410-141-3390	3-20-2012	Adopt(T)	5-1-2012
410-141-0000	3-16-2012	Amend(T)	5-1-2012	410-141-3395	3-20-2012	Adopt(T)	5-1-2012
410-141-0070	11-21-2011	Amend(T)	1-1-2012	410-141-3420	3-26-2012	Adopt(T)	5-1-2012
410-141-0070	5-1-2012	Amend	6-1-2012	410-142-0020	1-1-2012	Amend	1-1-2012
410-141-0070(T)	5-1-2012	Repeal	6-1-2012	410-142-0040	1-1-2012	Amend	1-1-2012
410-141-0080	1-1-2012	Amend(T)	1-1-2012	410-146-0020	3-22-2012	Amend	5-1-2012
410-141-0080	5-1-2012	Amend	6-1-2012	410-146-0020(T)	3-22-2012	Repeal	5-1-2012
410-141-0080(T)	5-1-2012	Repeal	6-1-2012	410-147-0362	3-22-2012	Amend	5-1-2012
410-141-0264	2-7-2012	Amend(T)	3-1-2012	410-147-0362(T)	3-22-2012	Repeal	5-1-2012
410-141-0420	1-1-2012	Amend(T)	2-1-2012	410-148-0060	1-1-2012	Amend	1-1-2012
410-141-0520	12-23-2011	Amend	2-1-2012	410-500-0000	1-31-2012	Adopt(T)	3-1-2012
410-141-0520	1-1-2012	Amend(T)	2-1-2012	410-500-0010	1-31-2012	Adopt(T)	3-1-2012
410-141-0520	4-1-2012	Amend(T)	5-1-2012	410-500-0020	1-31-2012	Adopt(T)	3-1-2012
410-141-0520(T)	12-23-2011	Repeal	2-1-2012	410-500-0030	1-31-2012	Adopt(T)	3-1-2012
410-141-0520(T)	4-1-2012	Suspend	5-1-2012	410-500-0040	1-31-2012	Adopt(T)	3-1-2012
410-141-0860	3-22-2012	Amend	5-1-2012	410-500-0050	1-31-2012	Adopt(T)	3-1-2012
410-141-0860(T)	3-22-2012	Repeal	5-1-2012	410-500-0060	1-31-2012	Adopt(T)	3-1-2012
410-141-3000	3-16-2012	Adopt(T)	5-1-2012	411-020-0002	6-1-2012	Amend(T)	7-1-2012
410-141-3010	3-16-2012	Adopt(T)	5-1-2012	411-020-0030	6-1-2012	Amend(T)	7-1-2012
410-141-3015	3-26-2012	Adopt(T)	5-1-2012	411-020-0085	6-1-2012	Amend(T)	7-1-2012
410-141-3020	3-26-2012	Adopt(T)	5-1-2012	411-020-0123	6-1-2012	Adopt(T)	7-1-2012
410-141-3030	3-26-2012	Adopt(T)	5-1-2012	411-020-0126	6-1-2012	Adopt(T)	7-1-2012
410-141-3050	3-26-2012	Adopt(T)	5-1-2012	411-030-0070	6-1-2012	Amend	7-1-2012
410-141-3060	3-26-2012	Adopt(T)	5-1-2012	411-030-0070(T)	6-1-2012	Repeal	7-1-2012
410-141-3070	3-26-2012	Adopt(T)	5-1-2012	411-040-0000	12-20-2011	Amend(T)	2-1-2012
410-141-3080	3-26-2012	Adopt(T)	5-1-2012	411-054-0005	5-1-2012	Amend	6-1-2012
410-141-3120	3-30-2012	Adopt(T)	5-1-2012	411-054-0005(T)	5-1-2012	Repeal	6-1-2012
410-141-3140	3-26-2012	Adopt(T)	5-1-2012	411-054-0013	5-1-2012	Amend	6-1-2012
410-141-3145	3-26-2012	Adopt(T)	5-1-2012	411-054-0013(T)	5-1-2012	Repeal	6-1-2012
410-141-3160	3-26-2012	Adopt(T)	5-1-2012	411-054-0016	5-1-2012	Amend	6-1-2012
410-141-3170	3-26-2012	Adopt(T)	5-1-2012	411-054-0016(T)	5-1-2012	Repeal	6-1-2012
410-141-3180	3-26-2012	Adopt(T)	5-1-2012	411-085-0010	4-10-2012	Amend	5-1-2012
410-141-3200	3-26-2012	Adopt(T)	5-1-2012	411-085-0015	4-10-2012	Amend	5-1-2012
410-141-3220	3-26-2012	Adopt(T)	5-1-2012	411-320-0020	1-1-2012	Amend	2-1-2012
410-141-3260	3-26-2012	Adopt(T)	5-1-2012	411-320-0080	1-1-2012	Amend	2-1-2012
410-141-3261	3-26-2012	Adopt(T)	5-1-2012	411-320-0090	12-28-2011	Amend	2-1-2012
410-141-3262	3-26-2012	Adopt(T)	5-1-2012	411-320-0090(T)	12-28-2011	Repeal	2-1-2012
410-141-3263	3-26-2012	Adopt(T)	5-1-2012	411-320-0110	12-28-2011	Amend	2-1-2012
410-141-3264	3-26-2012	Adopt(T)	5-1-2012	411-320-0110(T)	12-28-2011	Repeal	2-1-2012
410-141-3265	3-26-2012	Adopt(T)	5-1-2012	411-320-0175	1-1-2012	Amend(T)	2-1-2012
410-141-3266	3-26-2012	Adopt(T)	5-1-2012	411-320-0175	6-30-2012	Amend	8-1-2012
410-141-3268	3-26-2012	Adopt(T)	5-1-2012	411-320-0175(T)	6-30-2012	Repeal	8-1-2012
410-141-3270	3-26-2012	Adopt(T)	5-1-2012	411-320-0190	1-1-2012	Amend	2-1-2012
410-141-3280	3-26-2012	Adopt(T)	5-1-2012	411-323-0010	1-6-2012	Amend	2-1-2012
410-141-3300	3-26-2012	Adopt(T)	5-1-2012	411-323-0010(T)	1-6-2012	Repeal	2-1-2012
410-141-3320	3-26-2012	Adopt(T)	5-1-2012	411-323-0020	1-6-2012	Amend	2-1-2012
410-141-3340	3-20-2012	Adopt(T)	5-1-2012	411-323-0020(T)	1-6-2012	Repeal	2-1-2012
410-141-3345	3-20-2012	Adopt(T)	5-1-2012	411-323-0030	1-6-2012	Amend	2-1-2012

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411-323-0035	1-6-2012	Adopt	2-1-2012	411-335-0050	1-6-2012	Repeal	2-1-2012
411-323-0035(T)	1-6-2012	Repeal	2-1-2012	411-335-0060	1-6-2012	Amend	2-1-2012
411-323-0040	1-6-2012	Amend	2-1-2012	411-335-0060(T)	1-6-2012	Repeal	2-1-2012
411-323-0040(T)	1-6-2012	Repeal	2-1-2012	411-335-0070	1-6-2012	Repeal	2-1-2012
411-323-0050	1-6-2012	Amend	2-1-2012	411-335-0080	1-6-2012	Repeal	2-1-2012
411-323-0050(T)	1-6-2012	Repeal	2-1-2012	411-335-0090	1-6-2012	Repeal	2-1-2012
411-323-0060	1-6-2012	Amend	2-1-2012	411-335-0100	1-6-2012	Repeal	2-1-2012
411-323-0060(T)	1-6-2012	Repeal	2-1-2012	411-335-0110	1-6-2012	Repeal	2-1-2012
411-323-0070	1-6-2012	Amend	2-1-2012	411-335-0120	1-6-2012	Amend	2-1-2012
411-323-0070(T)	1-6-2012	Repeal	2-1-2012	411-335-0140	1-6-2012	Repeal	2-1-2012
411-325-0020	1-6-2012	Amend	2-1-2012	411-335-0230	1-6-2012	Amend	2-1-2012
411-325-0020(T)	1-6-2012	Repeal	2-1-2012	411-335-0300	1-6-2012	Repeal	2-1-2012
411-325-0025	1-6-2012	Adopt	2-1-2012	411-335-0310	1-6-2012	Amend	2-1-2012
411-325-0025(T)	1-6-2012	Repeal	2-1-2012	411-335-0310(T)	1-6-2012	Repeal	2-1-2012
411-325-0060	1-6-2012	Amend	2-1-2012	411-335-0370	1-6-2012	Repeal	2-1-2012
411-325-0060(T)	1-6-2012	Repeal	2-1-2012	411-335-0380	1-6-2012	Repeal	2-1-2012
411-325-0080	1-6-2012	Repeal	2-1-2012	411-335-0390	1-6-2012	Repeal	2-1-2012
411-325-0100	1-6-2012	Repeal	2-1-2012	411-340-0020	12-28-2011	Amend	2-1-2012
411-325-0110	1-6-2012	Amend	2-1-2012	411-340-0100	12-28-2011	Amend	2-1-2012
411-325-0150	1-6-2012	Amend	2-1-2012	411-340-0100(T)	12-28-2011	Repeal	2-1-2012
411-325-0160	1-6-2012	Repeal	2-1-2012	411-340-0110	12-28-2011	Amend	2-1-2012
411-325-0210	1-6-2012	Repeal	2-1-2012	411-340-0110(T)	12-28-2011	Repeal	2-1-2012
411-325-0310	1-6-2012	Repeal	2-1-2012	411-340-0120	12-28-2011	Amend	2-1-2012
411-325-0320	1-6-2012	Amend	2-1-2012	411-340-0125	12-28-2011	Adopt	2-1-2012
411-325-0320(T)	1-6-2012	Repeal	2-1-2012	411-340-0130	12-28-2011	Amend	2-1-2012
411-325-0430	1-6-2012	Amend	2-1-2012	411-340-0140	12-28-2011	Amend	2-1-2012
411-325-0450	1-6-2012	Repeal	2-1-2012	411-340-0150	12-28-2011	Amend	2-1-2012
411-325-0460	1-6-2012	Amend	2-1-2012	411-345-0010	1-6-2012	Amend	2-1-2012
411-325-0460(T)	1-6-2012	Repeal	2-1-2012	411-345-0010(T)	1-6-2012	Repeal	2-1-2012
411-328-0560	1-6-2012	Amend	2-1-2012	411-345-0020	1-6-2012	Amend	2-1-2012
411-328-0560(T)	1-6-2012	Repeal	2-1-2012	411-345-0020(T)	1-6-2012	Repeal	2-1-2012
411-328-0570	1-6-2012	Amend	2-1-2012	411-345-0030	1-6-2012	Amend	2-1-2012
411-328-0570(T)	1-6-2012	Repeal	2-1-2012	411-345-0030(T)	1-6-2012	Repeal	2-1-2012
411-328-0580	1-6-2012	Repeal	2-1-2012	411-345-0050	1-6-2012	Amend	2-1-2012
411-328-0590	1-6-2012	Repeal	2-1-2012	411-345-0050(T)	1-6-2012	Repeal	2-1-2012
411-328-0600	1-6-2012	Repeal	2-1-2012	411-345-0080	1-6-2012	Repeal	2-1-2012
411-328-0610	1-6-2012	Repeal	2-1-2012	411-345-0090	1-6-2012	Amend	2-1-2012
411-328-0620	1-6-2012	Amend	2-1-2012	411-345-0100	1-6-2012	Amend	2-1-2012
411-328-0630	1-6-2012	Amend	2-1-2012	411-345-0100(T)	1-6-2012	Repeal	2-1-2012
411-328-0630(T)	1-6-2012	Repeal	2-1-2012	411-345-0110	1-6-2012	Amend	2-1-2012
411-328-0670	1-6-2012	Repeal	2-1-2012	411-345-0110(T)	1-6-2012	Repeal	2-1-2012
411-328-0730	1-6-2012	Repeal	2-1-2012	411-345-0130	1-6-2012	Amend	2-1-2012
411-328-0740	1-6-2012	Amend	2-1-2012	411-345-0130(T)	1-6-2012	Repeal	2-1-2012
411-328-0740(T)	1-6-2012	Repeal	2-1-2012	411-345-0190	1-6-2012	Amend	2-1-2012
411-328-0805	1-6-2012	Repeal	2-1-2012	411-345-0190(T)	1-6-2012	Repeal	2-1-2012
411-328-0810	1-6-2012	Repeal	2-1-2012	411-360-0130	12-1-2011	Amend(T)	1-1-2012
411-328-0820	1-6-2012	Repeal	2-1-2012	411-360-0130	5-29-2012	Amend	7-1-2012
411-328-0830	1-6-2012	Repeal	2-1-2012	411-360-0130(T)	5-29-2012	Repeal	7-1-2012
411-330-0020	7-10-2012	Amend(T)	8-1-2012	411-360-0170	12-1-2011	Amend(T)	1-1-2012
411-330-0065	7-10-2012	Adopt(T)	8-1-2012	411-360-0170	12-30-2011	Amend(T)	2-1-2012
411-335-0010	1-6-2012	Amend	2-1-2012	411-360-0170	5-29-2012	Amend	7-1-2012
411-335-0010(T)	1-6-2012	Repeal	2-1-2012	411-360-0170(T)	12-30-2011	Suspend	2-1-2012
411-335-0020	1-6-2012	Amend	2-1-2012	411-360-0170(T)	5-29-2012	Repeal	7-1-2012
411-335-0020(T)	1-6-2012	Repeal	2-1-2012	411-360-0180	5-29-2012	Amend	7-1-2012
411-335-0030	1-6-2012	Amend	2-1-2012	411-360-0190	12-1-2011	Amend(T)	1-1-2012

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411-360-0190	12-30-2011	Amend(T)	2-1-2012	413-070-0934	12-28-2011	Amend	2-1-2012
411-360-0190	5-29-2012	Amend	7-1-2012	413-070-0939	12-28-2011	Amend	2-1-2012
411-360-0190(T)	12-30-2011	Suspend	2-1-2012	413-070-0944	12-28-2011	Amend	2-1-2012
411-360-0190(T)	5-29-2012	Repeal	7-1-2012	413-070-0949	12-28-2011	Amend	2-1-2012
411-360-0260	5-29-2012	Amend	7-1-2012	413-070-0959	12-28-2011	Amend	2-1-2012
411-365-0100	3-1-2012	Amend	4-1-2012	413-070-0964	12-28-2011	Amend	2-1-2012
411-365-0120	3-1-2012	Amend	4-1-2012	413-070-0969	12-28-2011	Amend	2-1-2012
411-365-0140	3-1-2012	Amend	4-1-2012	413-070-0970	12-28-2011	Amend	2-1-2012
411-365-0160	3-1-2012	Amend	4-1-2012	413-070-0974	12-28-2011	Amend	2-1-2012
411-365-0180	3-1-2012	Amend	4-1-2012	413-070-0979	12-28-2011	Repeal	2-1-2012
411-365-0200	3-1-2012	Amend	4-1-2012	413-100-0135	12-28-2011	Amend	2-1-2012
411-365-0220	3-1-2012	Amend	4-1-2012	413-100-0150	12-28-2011	Amend	2-1-2012
411-365-0240	3-1-2012	Amend	4-1-2012	413-100-0900	12-28-2011	Amend	2-1-2012
411-365-0260	3-1-2012	Amend	4-1-2012	413-100-0905	12-28-2011	Amend	2-1-2012
411-365-0280	3-1-2012	Amend	4-1-2012	413-100-0910	12-28-2011	Amend	2-1-2012
411-365-0300	3-1-2012	Amend	4-1-2012	413-100-0915	12-28-2011	Amend	2-1-2012
411-365-0320	3-1-2012	Amend	4-1-2012	413-100-0920	12-28-2011	Amend	2-1-2012
413-010-0700	4-4-2012	Amend	5-1-2012	413-100-0925	12-28-2011	Amend	2-1-2012
413-010-0705	4-4-2012	Amend	5-1-2012	413-100-0930	12-28-2011	Amend	2-1-2012
413-010-0710	4-4-2012	Amend	5-1-2012	413-100-0940	12-28-2011	Amend	2-1-2012
413-010-0712	4-4-2012	Repeal	5-1-2012	413-120-0400	6-26-2012	Amend	8-1-2012
413-010-0714	4-4-2012	Amend	5-1-2012	413-120-0420	12-28-2011	Amend(T)	2-1-2012
413-010-0715	4-4-2012	Amend	5-1-2012	413-120-0420	6-26-2012	Amend	8-1-2012
413-010-0716	4-4-2012	Amend	5-1-2012	413-120-0440	6-26-2012	Amend	8-1-2012
413-010-0717	4-4-2012	Amend	5-1-2012	413-120-0450	6-26-2012	Amend	8-1-2012
413-010-0718	4-4-2012	Amend	5-1-2012	413-120-0455	6-26-2012	Amend	8-1-2012
413-010-0720	4-4-2012	Amend	5-1-2012	413-120-0457	6-26-2012	Adopt	8-1-2012
413-010-0721	4-4-2012	Amend	5-1-2012	413-120-0460	12-28-2011	Amend(T)	2-1-2012
413-010-0722	4-4-2012	Amend	5-1-2012	413-120-0460	6-26-2012	Amend	8-1-2012
413-010-0723	4-4-2012	Amend	5-1-2012	413-120-0470	12-28-2011	Suspend	2-1-2012
413-010-0732	4-4-2012	Amend	5-1-2012	413-120-0470	6-26-2012	Repeal	8-1-2012
413-010-0735	4-4-2012	Amend	5-1-2012	413-120-0475	6-26-2012	Adopt	8-1-2012
413-010-0738	4-4-2012	Amend	5-1-2012	413-130-0000	12-28-2011	Amend	2-1-2012
413-010-0740	4-4-2012	Amend	5-1-2012	413-130-0010	12-28-2011	Amend	2-1-2012
413-010-0743	4-4-2012	Amend	5-1-2012	413-130-0015	12-28-2011	Adopt	2-1-2012
413-010-0745	4-4-2012	Amend	5-1-2012	413-130-0020	12-28-2011	Amend	2-1-2012
413-010-0746	4-4-2012	Amend	5-1-2012	413-130-0030	12-28-2011	Am. & Ren.	2-1-2012
413-010-0748	4-4-2012	Amend	5-1-2012	413-130-0040	12-28-2011	Amend	2-1-2012
413-010-0750	4-4-2012	Amend	5-1-2012	413-130-0045	12-28-2011	Repeal	2-1-2012
413-015-0470	3-12-2012	Amend(T)	4-1-2012	413-130-0050	12-28-2011	Amend	2-1-2012
413-020-0200	12-28-2011	Amend	2-1-2012	413-130-0055	12-28-2011	Adopt	2-1-2012
413-020-0210	12-28-2011	Amend	2-1-2012	413-130-0060	12-28-2011	Repeal	2-1-2012
413-020-0230	12-28-2011	Amend	2-1-2012	413-130-0070	12-28-2011	Amend	2-1-2012
413-020-0233	12-28-2011	Amend	2-1-2012	413-130-0075	12-28-2011	Amend	2-1-2012
413-020-0236	12-28-2011	Amend	2-1-2012	413-130-0080	12-28-2011	Amend	2-1-2012
413-020-0240	12-28-2011	Amend	2-1-2012	413-130-0090	12-28-2011	Amend	2-1-2012
413-020-0245	12-28-2011	Amend	2-1-2012	413-130-0100	12-28-2011	Amend	2-1-2012
413-020-0255	12-28-2011	Amend	2-1-2012	413-130-0110	12-28-2011	Amend	2-1-2012
413-070-0063	12-28-2011	Amend	2-1-2012	413-130-0115	12-28-2011	Repeal	2-1-2012
413-070-0900	12-28-2011	Amend	2-1-2012	413-130-0125	12-28-2011	Amend	2-1-2012
413-070-0905	12-28-2011	Amend	2-1-2012	413-130-0130	12-28-2011	Amend	2-1-2012
413-070-0909	12-28-2011	Amend	2-1-2012	413-200-0270	12-28-2011	Amend	2-1-2012
413-070-0917	12-28-2011	Amend	2-1-2012	413-200-0272	12-28-2011	Amend	2-1-2012
413-070-0919	12-28-2011	Amend	2-1-2012	413-200-0274	12-28-2011	Amend	2-1-2012
413-070-0925	12-28-2011	Amend	2-1-2012	413-200-0276	12-28-2011	Amend	2-1-2012
413-070-0929	12-28-2011	Repeal	2-1-2012	413-200-0278	12-28-2011	Amend	2-1-2012

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413-200-0281	12-28-2011	Amend	2-1-2012	415-065-0015	2-9-2012	Amend	3-1-2012
413-200-0283	12-28-2011	Amend	2-1-2012	415-065-0020	7-1-2012	Amend	8-1-2012
413-200-0285	12-28-2011	Amend	2-1-2012	415-065-0025	2-9-2012	Amend	3-1-2012
413-200-0287	12-28-2011	Amend	2-1-2012	415-065-0030	2-9-2012	Amend	3-1-2012
413-200-0289	12-28-2011	Amend	2-1-2012	415-065-0030	7-1-2012	Amend	8-1-2012
413-200-0292	12-28-2011	Amend	2-1-2012	415-065-0035	2-9-2012	Amend	3-1-2012
413-200-0294	12-28-2011	Amend	2-1-2012	415-065-0035	7-1-2012	Amend	8-1-2012
413-200-0296	12-28-2011	Amend	2-1-2012	415-065-0040	2-9-2012	Amend	3-1-2012
413-200-0301	12-28-2011	Amend	2-1-2012	415-065-0040	7-1-2012	Amend	8-1-2012
413-200-0305	12-28-2011	Amend	2-1-2012	415-065-0045	2-9-2012	Amend	3-1-2012
413-200-0306	12-28-2011	Amend	2-1-2012	415-065-0050	2-9-2012	Amend	3-1-2012
413-200-0308	12-28-2011	Amend	2-1-2012	415-065-0050	7-1-2012	Amend	8-1-2012
413-200-0314	12-28-2011	Amend	2-1-2012	415-065-0055	2-9-2012	Amend	3-1-2012
413-200-0335	12-28-2011	Amend	2-1-2012	415-065-0055	7-1-2012	Amend	8-1-2012
413-200-0348	12-28-2011	Amend	2-1-2012	415-065-0060	2-9-2012	Amend	3-1-2012
413-200-0352	12-28-2011	Amend	2-1-2012	415-065-0060	7-1-2012	Amend	8-1-2012
413-200-0354	12-28-2011	Amend	2-1-2012	415-065-0065	2-9-2012	Amend	3-1-2012
413-200-0358	12-28-2011	Amend	2-1-2012	415-065-0070	7-1-2012	Repeal	8-1-2012
413-200-0362	12-28-2011	Amend	2-1-2012	416-100-0000	4-3-2012	Amend	5-1-2012
413-200-0371	12-28-2011	Amend	2-1-2012	416-100-0005	4-3-2012	Amend	5-1-2012
413-200-0377	12-28-2011	Amend	2-1-2012	416-100-0010	4-3-2012	Amend	5-1-2012
413-200-0379	12-28-2011	Amend	2-1-2012	416-100-0020	4-3-2012	Amend	5-1-2012
413-200-0383	12-28-2011	Amend	2-1-2012	416-100-0030	4-3-2012	Amend	5-1-2012
413-200-0386	12-28-2011	Amend	2-1-2012	416-100-0040	4-3-2012	Amend	5-1-2012
413-200-0388	12-28-2011	Amend	2-1-2012	416-100-0050	4-3-2012	Amend	5-1-2012
413-200-0390	12-28-2011	Amend	2-1-2012	416-100-0060	4-3-2012	Amend	5-1-2012
413-200-0393	12-28-2011	Amend	2-1-2012	416-100-0070	4-3-2012	Repeal	5-1-2012
413-200-0394	12-28-2011	Amend	2-1-2012	416-115-0000	12-14-2011	Repeal	1-1-2012
413-200-0395	12-28-2011	Amend	2-1-2012	416-115-0010	12-14-2011	Amend	1-1-2012
413-200-0396	12-28-2011	Amend	2-1-2012	416-115-0010	6-25-2012	Amend	8-1-2012
413-200-0404	1-3-2012	Amend	2-1-2012	416-115-0020	12-14-2011	Amend	1-1-2012
413-200-0404(T)	1-3-2012	Repeal	2-1-2012	416-115-0025	12-14-2011	Adopt	1-1-2012
413-200-0409	1-3-2012	Amend	2-1-2012	416-115-0025	6-25-2012	Amend	8-1-2012
413-200-0409(T)	1-3-2012	Repeal	2-1-2012	416-115-0030	12-14-2011	Amend	1-1-2012
413-200-0414	1-3-2012	Amend	2-1-2012	416-115-0030	6-25-2012	Amend	8-1-2012
413-200-0414(T)	1-3-2012	Repeal	2-1-2012	416-115-0040	12-14-2011	Repeal	1-1-2012
413-200-0419	1-3-2012	Amend	2-1-2012	416-115-0050	12-14-2011	Repeal	1-1-2012
413-200-0419(T)	1-3-2012	Repeal	2-1-2012	416-115-0060	12-14-2011	Repeal	1-1-2012
413-200-0424	1-3-2012	Amend	2-1-2012	416-115-0070	12-14-2011	Repeal	1-1-2012
413-200-0424(T)	1-3-2012	Repeal	2-1-2012	416-115-0080	12-14-2011	Repeal	1-1-2012
414-205-0100	6-12-2012	Amend(T)	7-1-2012	416-115-0090	12-14-2011	Repeal	1-1-2012
414-300-0230	6-12-2012	Amend(T)	7-1-2012	416-115-0100	12-14-2011	Repeal	1-1-2012
414-350-0180	6-12-2012	Amend(T)	7-1-2012	416-115-0110	12-14-2011	Repeal	1-1-2012
415-056-0000	2-9-2012	Repeal	3-1-2012	416-115-0120	12-14-2011	Repeal	1-1-2012
415-056-0005	2-9-2012	Repeal	3-1-2012	416-115-0130	12-14-2011	Repeal	1-1-2012
415-056-0010	2-9-2012	Repeal	3-1-2012	416-115-0140	12-14-2011	Repeal	1-1-2012
415-056-0015	2-9-2012	Repeal	3-1-2012	416-115-0150	12-14-2011	Repeal	1-1-2012
415-056-0020	2-9-2012	Repeal	3-1-2012	416-115-0160	12-14-2011	Repeal	1-1-2012
415-056-0025	2-9-2012	Repeal	3-1-2012	416-115-0170	12-14-2011	Repeal	1-1-2012
415-056-0030	2-9-2012	Adopt	3-1-2012	416-115-0180	12-14-2011	Repeal	1-1-2012
415-056-0035	2-9-2012	Adopt	3-1-2012	416-115-0190	12-14-2011	Repeal	1-1-2012
415-056-0040	2-9-2012	Adopt	3-1-2012	416-115-0200	12-14-2011	Repeal	1-1-2012
415-056-0045	2-9-2012	Adopt	3-1-2012	416-115-0210	12-14-2011	Repeal	1-1-2012
415-056-0050	2-9-2012	Adopt	3-1-2012	416-115-0220	12-14-2011	Repeal	1-1-2012
415-065-0010	2-9-2012	Amend	3-1-2012	416-115-0230	12-14-2011	Repeal	1-1-2012
415-065-0010	7-1-2012	Amend	8-1-2012	416-115-0240	12-14-2011	Repeal	1-1-2012

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416-115-0260	12-14-2011	Repeal	1-1-2012	436-009-0210	4-1-2012	Amend	4-1-2012
416-115-0270	12-14-2011	Repeal	1-1-2012	436-009-0215	4-1-2012	Amend	4-1-2012
416-115-0280	12-14-2011	Repeal	1-1-2012	436-009-0220	4-1-2012	Amend	4-1-2012
416-170-0000	2-3-2012	Amend	3-1-2012	436-009-0225	4-1-2012	Amend	4-1-2012
416-170-0005	2-3-2012	Amend	3-1-2012	436-009-0230	4-1-2012	Amend	4-1-2012
416-170-0010	2-3-2012	Amend	3-1-2012	436-009-0235	4-1-2012	Amend	4-1-2012
416-170-0020	2-3-2012	Amend	3-1-2012	436-009-0240	4-1-2012	Amend	4-1-2012
416-170-0030	2-3-2012	Amend	3-1-2012	436-009-0245	4-1-2012	Amend	4-1-2012
416-410-0010	4-3-2012	Amend	5-1-2012	436-009-0250	4-1-2012	Repeal	4-1-2012
416-450-0000	4-3-2012	Amend	5-1-2012	436-009-0255	4-1-2012	Amend	4-1-2012
416-450-0010	4-3-2012	Amend	5-1-2012	436-009-0260	4-1-2012	Amend	4-1-2012
416-450-0020	4-3-2012	Amend	5-1-2012	436-009-0260	4-23-2012	Amend(T)	5-1-2012
416-450-0030	4-3-2012	Amend	5-1-2012	436-009-0265	4-1-2012	Amend	4-1-2012
416-450-0040	4-3-2012	Amend	5-1-2012	436-009-0270	4-1-2012	Amend	4-1-2012
416-450-0050	4-3-2012	Amend	5-1-2012	436-009-0275	4-1-2012	Amend	4-1-2012
416-450-0060	4-3-2012	Amend	5-1-2012	436-009-0280	4-1-2012	Repeal	4-1-2012
416-450-0070	4-3-2012	Amend	5-1-2012	436-009-0285	4-1-2012	Amend	4-1-2012
416-500-0050	6-25-2012	Amend	8-1-2012	436-009-0290	4-1-2012	Amend	4-1-2012
423-010-0023	6-1-2012	Amend	7-1-2012	436-010-0210	1-1-2012	Amend	1-1-2012
423-010-0026	6-1-2012	Amend	7-1-2012	436-010-0230	1-1-2012	Amend	1-1-2012
436-001-0003	7-1-2012	Amend(T)	7-1-2012	436-010-0280	1-1-2012	Amend	1-1-2012
436-001-0410	7-1-2012	Amend(T)	7-1-2012	436-010-0330	4-1-2012	Amend	4-1-2012
436-009-0003	4-1-2012	Amend	4-1-2012	436-015-0003	4-1-2012	Amend	4-1-2012
436-009-0004	4-1-2012	Amend	4-1-2012	436-015-0005	4-1-2012	Amend	4-1-2012
436-009-0010	4-1-2012	Amend	4-1-2012	436-015-0007	4-1-2012	Amend	4-1-2012
436-009-0022	4-1-2012	Repeal	4-1-2012	436-015-0008	1-1-2012	Amend	1-1-2012
436-009-0030	4-1-2012	Amend	4-1-2012	436-015-0009	4-1-2012	Amend	4-1-2012
436-009-0040	4-1-2012	Amend	4-1-2012	436-015-0010	4-1-2012	Amend	4-1-2012
436-009-0050	4-1-2012	Amend	4-1-2012	436-015-0020	4-1-2012	Repeal	4-1-2012
436-009-0060	4-1-2012	Amend	4-1-2012	436-015-0030	4-1-2012	Amend	4-1-2012
436-009-0070	4-1-2012	Amend	4-1-2012	436-015-0050	4-1-2012	Amend	4-1-2012
436-009-0080	1-1-2012	Amend	1-1-2012	436-015-0075	4-1-2012	Adopt	4-1-2012
436-009-0080	4-1-2012	Amend	4-1-2012	436-015-0080	4-1-2012	Amend	4-1-2012
436-009-0080	4-23-2012	Amend(T)	5-1-2012	436-015-0110	4-1-2012	Amend	4-1-2012
436-009-0090	4-1-2012	Amend	4-1-2012	436-030-0003	1-1-2012	Amend	1-1-2012
436-009-0110	4-1-2012	Amend	4-1-2012	436-030-0036	1-1-2012	Amend	1-1-2012
436-009-0115	4-1-2012	Amend	4-1-2012	436-030-0145	1-1-2012	Amend	1-1-2012
436-009-0120	4-1-2012	Amend	4-1-2012	436-030-0165	1-1-2012	Amend	1-1-2012
436-009-0125	4-1-2012	Amend	4-1-2012	437-001-0015	7-1-2012	Amend	6-1-2012
436-009-0130	4-1-2012	Amend	4-1-2012	437-001-0075	7-1-2012	Amend	6-1-2012
436-009-0135	4-1-2012	Amend	4-1-2012	437-001-0145	7-1-2012	Amend	6-1-2012
436-009-0140	4-1-2012	Amend	4-1-2012	437-001-0160	7-1-2012	Amend	6-1-2012
436-009-0145	4-1-2012	Amend	4-1-2012	437-001-0165	7-1-2012	Amend	6-1-2012
436-009-0150	4-1-2012	Repeal	4-1-2012	437-001-0175	7-1-2012	Amend	6-1-2012
436-009-0155	4-1-2012	Amend	4-1-2012	437-001-0230	7-1-2012	Amend	6-1-2012
436-009-0160	4-1-2012	Amend	4-1-2012	437-001-0255	7-1-2012	Amend	6-1-2012
436-009-0165	4-1-2012	Amend	4-1-2012	437-001-0260	7-1-2012	Repeal	6-1-2012
436-009-0170	4-1-2012	Amend	4-1-2012	437-001-0400	7-1-2012	Amend	6-1-2012
436-009-0175	4-1-2012	Amend	4-1-2012	437-001-0405	7-1-2012	Amend	6-1-2012
436-009-0177	4-1-2012	Adopt	4-1-2012	437-001-0410	7-1-2012	Amend	6-1-2012
436-009-0180	4-1-2012	Amend	4-1-2012	437-001-0411	7-1-2012	Amend	6-1-2012
436-009-0185	4-1-2012	Amend	4-1-2012	437-001-0415	7-1-2012	Amend	6-1-2012
436-009-0200	4-1-2012	Amend	4-1-2012	437-001-0420	7-1-2012	Amend	6-1-2012
436-009-0205	4-1-2012	Amend	4-1-2012	437-001-0430	7-1-2012	Amend	6-1-2012
436-009-0206	4-1-2012	Amend	4-1-2012	437-001-0435	7-1-2012	Amend	6-1-2012

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437-001-0760	7-1-2012	Amend	6-1-2012	437-003-3060	7-1-2012	Adopt	1-1-2012
437-002-0005	12-8-2011	Amend	1-1-2012	437-004-1110	12-8-2011	Amend	1-1-2012
437-002-0080	4-10-2012	Amend	5-1-2012	437-005-0001	12-8-2011	Amend	1-1-2012
437-002-0100	4-10-2012	Amend	5-1-2012	437-005-0001	4-10-2012	Amend	5-1-2012
437-002-0120	12-8-2011	Amend	1-1-2012	437-005-0002	12-8-2011	Amend	1-1-2012
437-002-0120	4-10-2012	Amend	5-1-2012	437-005-0003	12-8-2011	Amend	1-1-2012
437-002-0123	12-8-2011	Repeal	1-1-2012	441-025-0050	7-9-2012	Amend	8-1-2012
437-002-0125	12-8-2011	Repeal	1-1-2012	441-175-0002	7-9-2012	Amend	8-1-2012
437-002-0127	12-8-2011	Repeal	1-1-2012	441-175-0010	7-9-2012	Amend	8-1-2012
437-002-0128	12-8-2011	Repeal	1-1-2012	441-175-0060	7-9-2012	Amend	8-1-2012
437-002-0130	12-8-2011	Repeal	1-1-2012	441-175-0070	7-9-2012	Amend	8-1-2012
437-002-0134	12-8-2011	Adopt	1-1-2012	441-175-0080	7-9-2012	Amend	8-1-2012
437-002-0135	12-8-2011	Repeal	1-1-2012	441-175-0100	7-9-2012	Amend	8-1-2012
437-002-0136	12-8-2011	Repeal	1-1-2012	441-175-0105	7-9-2012	Amend	8-1-2012
437-002-0137	12-8-2011	Repeal	1-1-2012	441-175-0120	7-9-2012	Amend	8-1-2012
437-002-0140	12-8-2011	Amend	1-1-2012	441-175-0130	7-9-2012	Amend	8-1-2012
437-002-0161	4-10-2012	Amend	5-1-2012	441-175-0150	7-9-2012	Amend	8-1-2012
437-002-0180	4-10-2012	Amend	5-1-2012	441-175-0160	7-9-2012	Amend	8-1-2012
437-002-0182	4-10-2012	Amend	5-1-2012	441-175-0165	7-9-2012	Amend	8-1-2012
437-002-0220	12-8-2011	Amend	1-1-2012	441-195-0020	7-9-2012	Amend	8-1-2012
437-002-0220	4-10-2012	Amend	5-1-2012	441-505-3046	12-15-2011	Amend(T)	1-1-2012
437-002-0240	4-10-2012	Amend	5-1-2012	441-674-0005	1-1-2012	Repeal	2-1-2012
437-002-0280	4-10-2012	Amend	5-1-2012	441-674-0100	1-1-2012	Repeal	2-1-2012
437-002-0300	4-10-2012	Amend	5-1-2012	441-674-0120	1-1-2012	Repeal	2-1-2012
437-002-0312	4-10-2012	Amend	5-1-2012	441-674-0130	1-1-2012	Repeal	2-1-2012
437-002-0340	12-8-2011	Amend	1-1-2012	441-674-0140	1-1-2012	Repeal	2-1-2012
437-002-0340	4-10-2012	Amend	5-1-2012	441-674-0210	1-1-2012	Repeal	2-1-2012
437-002-0360	12-8-2011	Amend	1-1-2012	441-674-0220	1-1-2012	Repeal	2-1-2012
437-002-0360	4-10-2012	Amend	5-1-2012	441-674-0230	1-1-2012	Repeal	2-1-2012
437-002-0360	7-1-2012	Amend	1-1-2012	441-674-0240	1-1-2012	Repeal	2-1-2012
437-002-0364	12-8-2011	Amend	1-1-2012	441-674-0250	1-1-2012	Repeal	2-1-2012
437-002-0373	4-10-2012	Amend	5-1-2012	441-674-0310	1-1-2012	Repeal	2-1-2012
437-002-1001	7-1-2012	Adopt	1-1-2012	441-674-0510	1-1-2012	Repeal	2-1-2012
437-002-1017	7-1-2012	Adopt	1-1-2012	441-674-0520	1-1-2012	Repeal	2-1-2012
437-002-1018	7-1-2012	Adopt	1-1-2012	441-674-0910	1-1-2012	Repeal	2-1-2012
437-002-1025	7-1-2012	Adopt	1-1-2012	441-674-0915	1-1-2012	Repeal	2-1-2012
437-002-1027	7-1-2012	Adopt	1-1-2012	441-674-0920	1-1-2012	Repeal	2-1-2012
437-002-1028	7-1-2012	Adopt	1-1-2012	441-710-0540	12-15-2011	Amend(T)	1-1-2012
437-002-1029	7-1-2012	Adopt	1-1-2012	441-730-0246	12-15-2011	Amend(T)	1-1-2012
437-002-1043	7-1-2012	Adopt	1-1-2012	441-830-0010	11-23-2011	Repeal	1-1-2012
437-002-1044	7-1-2012	Adopt	1-1-2012	441-830-0015	11-23-2011	Repeal	1-1-2012
437-002-1045	7-1-2012	Adopt	1-1-2012	441-830-0020	11-23-2011	Repeal	1-1-2012
437-002-1047	7-1-2012	Adopt	1-1-2012	441-830-0030	11-23-2011	Repeal	1-1-2012
437-002-1048	7-1-2012	Adopt	1-1-2012	441-830-0040	11-23-2011	Repeal	1-1-2012
437-002-1050	7-1-2012	Adopt	1-1-2012	441-850-0042	12-15-2011	Amend(T)	1-1-2012
437-002-1051	7-1-2012	Adopt	1-1-2012	441-880-0005	11-23-2011	Adopt	1-1-2012
437-002-1052	7-1-2012	Adopt	1-1-2012	441-880-0006	11-23-2011	Adopt	1-1-2012
437-003-0001	12-8-2011	Amend	1-1-2012	441-880-0007	11-23-2011	Adopt	1-1-2012
437-003-0001	4-10-2012	Amend	5-1-2012	441-880-0008	11-23-2011	Adopt	1-1-2012
437-003-0001	7-1-2012	Amend	1-1-2012	441-910-0000	1-1-2012	Amend	1-1-2012
437-003-0015	12-8-2011	Amend	1-1-2012	441-910-0092	1-1-2012	Repeal	1-1-2012
437-003-0062	7-1-2012	Adopt	1-1-2012	442-005-0020	1-13-2012	Amend	2-1-2012
437-003-0096	12-8-2011	Amend	1-1-2012	442-005-0030	1-13-2012	Amend	2-1-2012
437-003-0875	4-10-2012	Amend	5-1-2012	442-005-0050	1-13-2012	Amend	2-1-2012
437-003-1101	7-1-2012	Adopt	1-1-2012	442-005-0070	1-13-2012	Amend	2-1-2012
437-003-1127	7-1-2012	Adopt	1-1-2012	442-010-0020	12-22-2011	Amend	2-1-2012

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442-010-0030	12-22-2011	Amend	2-1-2012	459-050-0077	5-24-2012	Amend	7-1-2012
442-010-0040	12-22-2011	Amend	2-1-2012	459-050-0080	5-24-2012	Amend	7-1-2012
442-010-0055	12-22-2011	Amend	2-1-2012	459-050-0090	5-24-2012	Amend	7-1-2012
442-010-0060	12-22-2011	Amend	2-1-2012	459-050-0120	5-24-2012	Amend	7-1-2012
442-010-0060(T)	12-22-2011	Repeal	2-1-2012	459-050-0150	5-24-2012	Amend	7-1-2012
442-010-0065	12-22-2011	Repeal	2-1-2012	459-050-0200	5-24-2012	Amend	7-1-2012
442-010-0070	12-22-2011	Amend	2-1-2012	459-050-0210	5-24-2012	Amend	7-1-2012
442-010-0075	12-22-2011	Amend	2-1-2012	459-050-0230	5-24-2012	Amend	7-1-2012
442-010-0075(T)	12-22-2011	Repeal	2-1-2012	459-050-0250	5-24-2012	Amend	7-1-2012
442-010-0080	12-22-2011	Amend	2-1-2012	459-050-0300	5-24-2012	Amend	7-1-2012
442-010-0085	12-22-2011	Amend	2-1-2012	459-060-0020	11-23-2011	Amend	1-1-2012
442-010-0090	12-22-2011	Amend	2-1-2012	459-075-0060	2-1-2012	Amend	3-1-2012
442-010-0100	12-22-2011	Amend	2-1-2012	459-076-0005	11-23-2011	Amend	1-1-2012
442-010-0110	12-22-2011	Amend	2-1-2012	459-080-0010	2-1-2012	Amend	3-1-2012
442-010-0120	12-22-2011	Amend	2-1-2012	459-080-0500	3-28-2012	Amend	5-1-2012
442-010-0160	12-22-2011	Amend	2-1-2012	461-001-0000	5-1-2012	Amend(T)	6-1-2012
442-010-0170	12-22-2011	Amend	2-1-2012	461-001-0025	12-29-2011	Amend	2-1-2012
442-010-0180	12-22-2011	Amend	2-1-2012	461-025-0300	1-31-2012	Amend(T)	3-1-2012
442-010-0190	12-22-2011	Amend	2-1-2012	461-025-0300	7-1-2012	Amend	8-1-2012
442-010-0200	12-22-2011	Repeal	2-1-2012	461-025-0300(T)	7-1-2012	Repeal	8-1-2012
442-010-0210	12-22-2011	Amend	2-1-2012	461-025-0310	1-31-2012	Amend(T)	3-1-2012
442-010-0215	12-22-2011	Amend	2-1-2012	461-025-0310	7-1-2012	Amend	8-1-2012
442-010-0220	12-22-2011	Amend	2-1-2012	461-025-0310(T)	7-1-2012	Repeal	8-1-2012
442-010-0230	12-22-2011	Amend	2-1-2012	461-025-0315	7-1-2012	Amend	8-1-2012
442-010-0240	12-22-2011	Amend	2-1-2012	461-101-0010	4-1-2012	Amend	5-1-2012
442-010-0250	12-22-2011	Repeal	2-1-2012	461-110-0340	5-1-2012	Amend(T)	6-1-2012
442-010-0260	12-22-2011	Amend	2-1-2012	461-110-0530	5-1-2012	Amend(T)	6-1-2012
443-002-0070	2-6-2012	Amend	3-1-2012	461-110-0630	5-1-2012	Amend(T)	6-1-2012
443-002-0190	2-6-2012	Amend	3-1-2012	461-115-0016	1-1-2012	Adopt	2-1-2012
459-001-0025	3-28-2012	Amend	5-1-2012	461-115-0016(T)	1-1-2012	Repeal	2-1-2012
459-005-0001	2-1-2012	Amend	3-1-2012	461-115-0030	1-1-2012	Amend	2-1-2012
459-005-0525	2-1-2012	Amend	3-1-2012	461-115-0030(T)	1-1-2012	Repeal	2-1-2012
459-005-0545	2-1-2012	Amend	3-1-2012	461-115-0050	1-1-2012	Amend	2-1-2012
459-005-0615	3-28-2012	Adopt	5-1-2012	461-115-0050(T)	1-1-2012	Repeal	2-1-2012
459-005-0620	11-22-2011	Adopt(T)	1-1-2012	461-115-0090	7-1-2012	Amend	8-1-2012
459-005-0620	2-1-2012	Adopt	3-1-2012	461-115-0140	7-1-2012	Amend	8-1-2012
459-007-0005	5-24-2012	Amend	7-1-2012	461-115-0230	1-1-2012	Amend	2-1-2012
459-007-0090	3-28-2012	Amend	5-1-2012	461-115-0230	2-29-2012	Amend(T)	4-1-2012
459-007-0270	3-28-2012	Amend	5-1-2012	461-115-0230	7-1-2012	Amend	8-1-2012
459-010-0005	11-23-2011	Repeal	1-1-2012	461-115-0230(T)	1-1-2012	Repeal	2-1-2012
459-013-0310	3-28-2012	Adopt	5-1-2012	461-115-0230(T)	7-1-2012	Repeal	8-1-2012
459-013-0320	3-28-2012	Adopt	5-1-2012	461-115-0690	1-1-2012	Amend	2-1-2012
459-014-0030	2-1-2012	Amend	3-1-2012	461-115-0690(T)	1-1-2012	Repeal	2-1-2012
459-014-0040	2-1-2012	Adopt	3-1-2012	461-115-0705	1-1-2012	Amend(T)	2-1-2012
459-014-0050	2-1-2012	Adopt	3-1-2012	461-115-0705	4-1-2012	Amend	5-1-2012
459-015-0005	11-23-2011	Amend	1-1-2012	461-115-0705(T)	4-1-2012	Repeal	5-1-2012
459-017-0060	3-28-2012	Amend	5-1-2012	461-120-0010	4-1-2012	Amend	5-1-2012
459-050-0000	5-24-2012	Amend	7-1-2012	461-120-0030	4-1-2012	Amend	5-1-2012
459-050-0001	5-24-2012	Amend	7-1-2012	461-120-0050	4-1-2012	Amend	5-1-2012
459-050-0005	5-24-2012	Amend	7-1-2012	461-120-0110	4-1-2012	Amend	5-1-2012
459-050-0030	5-24-2012	Amend	7-1-2012	461-120-0120	4-1-2012	Repeal	5-1-2012
459-050-0050	5-24-2012	Amend	7-1-2012	461-120-0125	4-1-2012	Amend	5-1-2012
459-050-0060	5-24-2012	Amend	7-1-2012	461-120-0130	4-1-2012	Amend	5-1-2012
459-050-0070	5-24-2012	Amend	7-1-2012	461-120-0210	4-1-2012	Amend	5-1-2012
459-050-0075	5-24-2012	Amend	7-1-2012	461-120-0210	7-1-2012	Amend	8-1-2012

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461-120-0330	4-1-2012	Amend	5-1-2012	461-145-0410	1-1-2012	Amend	2-1-2012
461-120-0340	4-1-2012	Amend	5-1-2012	461-145-0410	1-1-2012	Amend(T)	2-1-2012
461-120-0340	7-1-2012	Amend(T)	8-1-2012	461-145-0410	4-1-2012	Amend	5-1-2012
461-120-0340(T)	4-1-2012	Repeal	5-1-2012	461-145-0410(T)	1-1-2012	Repeal	2-1-2012
461-120-0350	4-1-2012	Amend	5-1-2012	461-145-0410(T)	4-1-2012	Repeal	5-1-2012
461-120-0510	4-1-2012	Amend	5-1-2012	461-145-0580	7-11-2012	Amend(T)	8-1-2012
461-120-0530	4-1-2012	Repeal	5-1-2012	461-145-0870	5-1-2012	Amend(T)	6-1-2012
461-120-0630	4-1-2012	Amend	5-1-2012	461-150-0080	7-1-2012	Amend	8-1-2012
461-125-0170	5-1-2012	Amend(T)	6-1-2012	461-155-0030	1-26-2012	Amend(T)	3-1-2012
461-130-0327	12-29-2011	Amend	2-1-2012	461-155-0030	4-1-2012	Amend	5-1-2012
461-130-0330	1-1-2012	Amend	2-1-2012	461-155-0150	1-1-2012	Amend	2-1-2012
461-130-0330	7-1-2012	Amend	8-1-2012	461-155-0150	4-10-2012	Amend(T)	5-1-2012
461-130-0330(T)	1-1-2012	Repeal	2-1-2012	461-155-0180	1-25-2012	Amend	3-1-2012
461-130-0335	1-1-2012	Amend	2-1-2012	461-155-0235	1-25-2012	Amend	3-1-2012
461-130-0335(T)	1-1-2012	Repeal	2-1-2012	461-155-0250	1-1-2012	Amend	2-1-2012
461-135-0010	1-13-2012	Amend(T)	2-1-2012	461-155-0250	2-1-2012	Amend(T)	3-1-2012
461-135-0010	7-1-2012	Amend	8-1-2012	461-155-0250	7-1-2012	Amend	8-1-2012
461-135-0010(T)	7-1-2012	Repeal	8-1-2012	461-155-0250(T)	7-1-2012	Repeal	8-1-2012
461-135-0070	5-1-2012	Amend(T)	6-1-2012	461-155-0270	1-1-2012	Amend	2-1-2012
461-135-0075	4-1-2012	Amend	5-1-2012	461-155-0290	3-1-2012	Amend	4-1-2012
461-135-0075	5-1-2012	Amend(T)	6-1-2012	461-155-0291	3-1-2012	Amend	4-1-2012
461-135-0075(T)	4-1-2012	Repeal	5-1-2012	461-155-0295	3-1-2012	Amend	4-1-2012
461-135-0089	1-1-2012	Amend	2-1-2012	461-155-0300	1-1-2012	Amend	2-1-2012
461-135-0089(T)	1-1-2012	Repeal	2-1-2012	461-155-0320	1-1-2012	Amend	2-1-2012
461-135-0475	12-29-2011	Amend	2-1-2012	461-155-0320(T)	1-1-2012	Repeal	2-1-2012
461-135-0485	1-1-2012	Adopt	2-1-2012	461-155-0360	1-1-2012	Amend	2-1-2012
461-135-0485(T)	1-1-2012	Repeal	2-1-2012	461-155-0500	4-1-2012	Amend	5-1-2012
461-135-0780	1-1-2012	Amend	2-1-2012	461-155-0528	1-1-2012	Repeal	2-1-2012
461-135-0832	1-1-2012	Amend	2-1-2012	461-155-0575	12-1-2011	Amend(T)	1-1-2012
461-135-0845	1-1-2012	Amend	2-1-2012	461-155-0575(T)	12-1-2011	Suspend	1-1-2012
461-135-0950	1-1-2012	Amend	2-1-2012	461-155-0693	1-1-2012	Repeal	2-1-2012
461-135-0950(T)	1-1-2012	Repeal	2-1-2012	461-160-0015	1-1-2012	Amend	2-1-2012
461-135-0960	1-1-2012	Repeal	2-1-2012	461-160-0015(T)	1-1-2012	Repeal	2-1-2012
461-135-0990	1-1-2012	Amend	2-1-2012	461-160-0055	7-12-2012	Amend(T)	8-1-2012
461-135-1100	1-1-2012	Amend(T)	2-1-2012	461-160-0120	5-1-2012	Amend(T)	6-1-2012
461-135-1100	4-1-2012	Amend	5-1-2012	461-160-0580	1-1-2012	Amend	2-1-2012
461-135-1100(T)	4-1-2012	Repeal	5-1-2012	461-160-0620	1-1-2012	Amend	2-1-2012
461-135-1110	1-1-2012	Suspend	2-1-2012	461-160-0620	7-1-2012	Amend(T)	8-1-2012
461-135-1110	4-1-2012	Repeal	5-1-2012	461-165-0035	2-27-2012	Amend(T)	4-1-2012
461-135-1175	6-8-2012	Suspend	7-1-2012	461-165-0035	7-1-2012	Amend	8-1-2012
461-135-1195	1-1-2012	Amend	2-1-2012	461-165-0035(T)	7-1-2012	Repeal	8-1-2012
461-135-1195(T)	1-1-2012	Repeal	2-1-2012	461-165-0180	7-1-2012	Amend	8-1-2012
461-135-1210	4-1-2012	Repeal	5-1-2012	461-170-0011	3-30-2012	Amend	5-1-2012
461-135-1250	4-12-2012	Amend(T)	5-1-2012	461-170-0011	5-1-2012	Amend(T)	6-1-2012
461-135-1250	4-13-2012	Amend(T)	5-1-2012	461-175-0200	7-1-2012	Amend	8-1-2012
461-135-1250(T)	4-13-2012	Suspend	5-1-2012	461-175-0210	1-1-2012	Amend(T)	2-1-2012
461-135-1260	3-30-2012	Adopt	5-1-2012	461-175-0210	6-30-2012	Amend	8-1-2012
461-135-1260	5-1-2012	Amend(T)	6-1-2012	461-175-0290	1-1-2012	Amend	2-1-2012
461-135-1260	5-24-2012	Amend(T)	7-1-2012	461-180-0050	1-1-2012	Amend	2-1-2012
461-135-1260(T)	5-24-2012	Suspend	7-1-2012	461-180-0050(T)	1-1-2012	Repeal	2-1-2012
461-140-0120	7-1-2012	Amend	8-1-2012	461-180-0070	1-1-2012	Amend	2-1-2012
461-145-0080	4-1-2012	Amend	5-1-2012	461-180-0070(T)	1-1-2012	Repeal	2-1-2012
461-145-0080	7-1-2012	Amend(T)	8-1-2012	461-180-0085	1-1-2012	Amend	2-1-2012
461-145-0080(T)	4-1-2012	Repeal	5-1-2012	461-180-0130	12-27-2011	Amend	2-1-2012
461-145-0130	1-1-2012	Amend	2-1-2012	461-180-0130	12-27-2011	Amend(T)	2-1-2012

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461-180-0130	4-1-2012	Amend	5-1-2012	576-030-0050	7-1-2012	Amend	7-1-2012
461-180-0130	5-24-2012	Amend(T)	7-1-2012	576-030-0055	7-1-2012	Amend	7-1-2012
461-180-0130(T)	4-1-2012	Repeal	5-1-2012	576-030-0060	7-1-2012	Amend	7-1-2012
461-190-0211	4-6-2012	Amend	5-1-2012	576-030-0070	7-1-2012	Amend	7-1-2012
461-190-0211	4-6-2012	Amend(T)	5-1-2012	576-040-0010	12-27-2011	Amend	2-1-2012
461-190-0211	5-23-2012	Amend(T)	7-1-2012	576-040-0012	12-27-2011	Amend	2-1-2012
461-190-0211(T)	4-6-2012	Repeal	5-1-2012	576-040-0015	12-27-2011	Amend	2-1-2012
461-190-0211(T)	5-23-2012	Suspend	7-1-2012	576-040-0025	12-27-2011	Repeal	2-1-2012
462-120-0050	6-1-2012	Amend	7-1-2012	576-040-0030	12-27-2011	Repeal	2-1-2012
462-120-0100	6-1-2012	Amend	7-1-2012	576-040-0035	12-27-2011	Repeal	2-1-2012
462-130-0010	6-1-2012	Amend	7-1-2012	576-065-0000	3-30-2012	Amend(T)	5-1-2012
462-160-0130	5-21-2012	Amend(T)	7-1-2012	576-065-0000	5-9-2012	Amend	6-1-2012
462-210-0010	6-1-2012	Amend	7-1-2012	576-065-0010	3-30-2012	Amend(T)	5-1-2012
462-210-0020	6-1-2012	Amend	7-1-2012	576-065-0010	5-9-2012	Amend	6-1-2012
462-210-0030	6-1-2012	Amend	7-1-2012	577-031-0135	3-12-2012	Amend(T)	4-1-2012
462-220-0010	6-1-2012	Amend	7-1-2012	577-060-0020	6-26-2012	Amend	8-1-2012
462-220-0040	6-1-2012	Amend	7-1-2012	578-041-0030	7-11-2012	Amend	8-1-2012
462-220-0050	6-1-2012	Amend	7-1-2012	578-072-0030	7-11-2012	Amend	8-1-2012
462-220-0080	6-1-2012	Amend	7-1-2012	579-020-0006	12-1-2011	Amend(T)	1-1-2012
462-220-0090	6-1-2012	Amend	7-1-2012	579-020-0006	4-23-2012	Amend	6-1-2012
462-230-0010	6-1-2012	Adopt	7-1-2012	579-020-0006	6-22-2012	Amend(T)	8-1-2012
462-230-0020	6-1-2012	Adopt	7-1-2012	579-030-0010	7-1-2012	Amend(T)	6-1-2012
471-030-0053	12-5-2011	Amend	1-1-2012	579-060-0190	6-8-2012	Amend(T)	7-1-2012
471-030-0053(T)	12-5-2011	Repeal	1-1-2012	580-010-0081	6-18-2012	Amend	8-1-2012
471-030-0080	3-5-2012	Amend	4-1-2012	580-010-0089	6-18-2012	Adopt	8-1-2012
471-030-0080(T)	3-5-2012	Repeal	4-1-2012	580-020-0005	1-12-2012	Amend	2-1-2012
471-030-0230	1-1-2012	Adopt(T)	2-1-2012	580-020-0005	6-18-2012	Amend	8-1-2012
471-030-0230	2-29-2012	Adopt(T)	4-1-2012	580-022-0045	3-16-2012	Amend(T)	5-1-2012
471-030-0230(T)	2-29-2012	Suspend	4-1-2012	580-040-0030	3-16-2012	Amend(T)	5-1-2012
471-031-0200	5-9-2012	Repeal	6-1-2012	580-040-0035	1-12-2012	Amend	2-1-2012
471-040-0010	2-10-2012	Amend	3-1-2012	580-040-0035	6-18-2012	Repeal	8-1-2012
471-040-0010(T)	2-10-2012	Repeal	3-1-2012	580-040-0040	6-18-2012	Amend	8-1-2012
471-040-0040	2-10-2012	Amend	3-1-2012	580-060-0050	6-18-2012	Amend	8-1-2012
471-040-0040(T)	2-10-2012	Repeal	3-1-2012	580-061-0010	6-18-2012	Amend	8-1-2012
471-040-0041	2-10-2012	Amend	3-1-2012	580-061-0030	6-18-2012	Amend	8-1-2012
471-040-0041(T)	2-10-2012	Repeal	3-1-2012	580-062-0020	6-18-2012	Amend	8-1-2012
571-050-0005	6-13-2012	Amend	7-1-2012	580-063-0005	6-18-2012	Amend	8-1-2012
571-051-0005	7-11-2012	Amend	8-1-2012	580-063-0020	6-18-2012	Amend	8-1-2012
571-051-0010	7-11-2012	Amend	8-1-2012	581-001-0000	4-2-2012	Amend	5-1-2012
571-060-0005	7-1-2012	Amend	7-1-2012	581-001-0005	4-2-2012	Amend	5-1-2012
571-060-0005	7-1-2012	Amend(T)	7-1-2012	581-015-2000	4-2-2012	Amend	5-1-2012
573-040-0005	5-10-2012	Amend	6-1-2012	581-015-2005	2-17-2012	Amend	4-1-2012
573-050-0015	6-11-2012	Amend	7-1-2012	581-015-2010	2-17-2012	Amend	4-1-2012
573-050-0025	6-11-2012	Amend	7-1-2012	581-015-2040	2-17-2012	Amend	4-1-2012
574-050-0005	1-27-2012	Amend	3-1-2012	581-015-2075	2-17-2012	Amend	4-1-2012
576-001-0060	12-27-2011	Adopt	2-1-2012	581-015-2080	2-17-2012	Amend	4-1-2012
576-010-0000	12-27-2011	Amend	2-1-2012	581-015-2080	4-2-2012	Amend	5-1-2012
576-010-0000	7-1-2012	Amend	7-1-2012	581-015-2300	4-2-2012	Amend(T)	5-1-2012
576-015-0020	3-30-2012	Amend(T)	5-1-2012	581-015-2300	6-11-2012	Amend	7-1-2012
576-015-0020	5-9-2012	Amend	6-1-2012	581-015-2300(T)	6-11-2012	Repeal	7-1-2012
576-024-0000	3-30-2012	Amend(T)	5-1-2012	581-015-2570	12-15-2011	Amend	1-1-2012
576-024-0000	5-9-2012	Amend	6-1-2012	581-015-2571	12-15-2011	Amend	1-1-2012
576-030-0015	7-1-2012	Amend	7-1-2012	581-015-2572	12-15-2011	Amend	1-1-2012
576-030-0020	7-1-2012	Amend	7-1-2012	581-015-2573	12-15-2011	Amend	1-1-2012
576-030-0040	7-1-2012	Amend	7-1-2012	581-015-2574	12-15-2011	Amend	1-1-2012
576-030-0045	7-1-2012	Amend	7-1-2012	581-015-2700	4-2-2012	Amend	5-1-2012

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581-015-2713	4-2-2012	Adopt	5-1-2012	581-023-0012	1-1-2012	Repeal	1-1-2012
581-015-2730	4-2-2012	Amend	5-1-2012	581-023-0040	12-15-2011	Amend	1-1-2012
581-015-2770	4-2-2012	Amend(T)	5-1-2012	581-023-0106	6-11-2012	Adopt	7-1-2012
581-015-2770	6-11-2012	Amend	7-1-2012	581-023-0110	1-1-2012	Repeal	1-1-2012
581-015-2770(T)	6-11-2012	Repeal	7-1-2012	581-023-0112	1-1-2012	Amend	1-1-2012
581-015-2774	4-2-2012	Adopt	5-1-2012	581-040-0000	12-15-2011	Repeal	1-1-2012
581-015-2775	4-2-2012	Amend	5-1-2012	581-044-0080	12-15-2011	Repeal	1-1-2012
581-015-2780	4-2-2012	Amend	5-1-2012	581-044-0090	12-15-2011	Repeal	1-1-2012
581-015-2790	4-2-2012	Amend	5-1-2012	581-044-0100	12-15-2011	Repeal	1-1-2012
581-015-2805	4-2-2012	Amend	5-1-2012	581-044-0110	12-15-2011	Repeal	1-1-2012
581-015-2810	4-2-2012	Amend	5-1-2012	581-044-0120	12-15-2011	Repeal	1-1-2012
581-015-2815	4-2-2012	Amend	5-1-2012	581-044-0130	12-15-2011	Repeal	1-1-2012
581-015-2825	4-2-2012	Amend	5-1-2012	581-044-0140	12-15-2011	Repeal	1-1-2012
581-015-2830	4-2-2012	Amend	5-1-2012	581-044-0200	12-15-2011	Repeal	1-1-2012
581-015-2835	4-2-2012	Amend	5-1-2012	581-044-0210	4-2-2012	Adopt	5-1-2012
581-015-2840	4-2-2012	Amend	5-1-2012	581-044-0220	4-2-2012	Adopt	5-1-2012
581-015-2863	4-2-2012	Adopt	5-1-2012	581-044-0230	4-2-2012	Adopt	5-1-2012
581-015-2870	4-2-2012	Amend	5-1-2012	581-044-0240	4-2-2012	Adopt	5-1-2012
581-015-2885	4-2-2012	Amend	5-1-2012	581-044-0250	4-2-2012	Adopt	5-1-2012
581-015-2890	4-2-2012	Amend	5-1-2012	581-044-0260	4-2-2012	Adopt	5-1-2012
581-020-0334	12-15-2011	Amend	1-1-2012	581-045-0500	2-3-2012	Repeal	3-1-2012
581-020-0336	1-1-2012	Amend	1-1-2012	581-045-0505	2-3-2012	Repeal	3-1-2012
581-020-0339	12-15-2011	Repeal	1-1-2012	581-045-0510	2-3-2012	Repeal	3-1-2012
581-020-0342	12-15-2011	Adopt	1-1-2012	581-045-0515	2-3-2012	Repeal	3-1-2012
581-020-0342(T)	12-15-2011	Repeal	1-1-2012	581-045-0520	2-3-2012	Repeal	3-1-2012
581-020-0343	12-15-2011	Adopt	1-1-2012	581-045-0522	2-3-2012	Repeal	3-1-2012
581-020-0343(T)	12-15-2011	Repeal	1-1-2012	581-045-0525	2-3-2012	Repeal	3-1-2012
581-021-00032	1-1-2012	Repeal	1-1-2012	581-045-0530	2-3-2012	Repeal	3-1-2012
581-021-0019	2-3-2012	Amend	3-1-2012	581-045-0535	2-3-2012	Repeal	3-1-2012
581-021-0034	1-1-2012	Repeal	1-1-2012	581-045-0538	2-3-2012	Repeal	3-1-2012
581-021-0035	1-1-2012	Repeal	1-1-2012	581-045-0540	2-3-2012	Repeal	3-1-2012
581-021-0042	1-1-2012	Repeal	1-1-2012	581-045-0545	2-3-2012	Repeal	3-1-2012
581-021-0044	1-1-2012	Repeal	1-1-2012	581-045-0550	2-3-2012	Repeal	3-1-2012
581-021-0047	6-11-2012	Adopt	7-1-2012	581-045-0555	2-3-2012	Repeal	3-1-2012
581-021-0062	6-11-2012	Repeal	7-1-2012	581-045-0560	2-3-2012	Repeal	3-1-2012
581-021-0220	4-2-2012	Amend	5-1-2012	581-045-0565	2-3-2012	Repeal	3-1-2012
581-021-0255	1-1-2012	Amend	1-1-2012	581-045-0570	2-3-2012	Repeal	3-1-2012
581-021-0270	4-2-2012	Amend	5-1-2012	581-045-0580	2-3-2012	Repeal	3-1-2012
581-021-0500	2-3-2012	Amend	3-1-2012	581-045-0586	2-3-2012	Amend	3-1-2012
581-021-0550	5-1-2012	Adopt	5-1-2012	581-053-0002	6-14-2012	Amend	7-1-2012
581-021-0553	5-1-2012	Adopt	5-1-2012	581-053-0003	6-14-2012	Adopt	7-1-2012
581-021-0556	5-1-2012	Adopt	5-1-2012	581-053-0004	6-14-2012	Adopt	7-1-2012
581-021-0559	5-1-2012	Adopt	5-1-2012	581-053-0006	6-14-2012	Repeal	7-1-2012
581-021-0563	5-1-2012	Adopt	5-1-2012	581-053-0008	6-14-2012	Repeal	7-1-2012
581-021-0566	5-1-2012	Adopt	5-1-2012	581-053-0010	6-14-2012	Amend	7-1-2012
581-022-1060	1-1-2012	Amend	1-1-2012	581-053-0015	6-14-2012	Repeal	7-1-2012
581-022-1133	2-3-2012	Amend	3-1-2012	581-053-0021	6-14-2012	Adopt	7-1-2012
581-022-1134	2-3-2012	Amend	3-1-2012	581-053-0031	6-14-2012	Adopt	7-1-2012
581-022-1135	2-3-2012	Amend	3-1-2012	581-053-0040	6-14-2012	Adopt	7-1-2012
581-022-1330	12-15-2011	Amend	1-1-2012	581-053-0050	6-14-2012	Adopt	7-1-2012
581-022-1369	1-1-2012	Repeal	1-1-2012	581-053-0060	6-14-2012	Adopt	7-1-2012
581-022-1680	1-1-2012	Repeal	1-1-2012	581-053-0070	6-14-2012	Adopt	7-1-2012
581-022-1720	12-15-2011	Amend	1-1-2012	581-053-0100	6-14-2012	Adopt	7-1-2012
581-022-1723	12-15-2011	Adopt	1-1-2012	581-053-0110	6-14-2012	Adopt	7-1-2012
581-022-1724	12-15-2011	Adopt	1-1-2012	581-053-0120	6-14-2012	Adopt	7-1-2012

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581-053-0135	6-14-2012	Adopt	7-1-2012	581-070-0140	12-15-2011	Repeal	1-1-2012
581-053-0140	6-14-2012	Adopt	7-1-2012	581-070-0150	12-15-2011	Repeal	1-1-2012
581-053-0145	6-14-2012	Adopt	7-1-2012	581-070-0170	12-15-2011	Repeal	1-1-2012
581-053-0150	6-14-2012	Adopt	7-1-2012	581-070-0180	12-15-2011	Repeal	1-1-2012
581-053-0160	6-14-2012	Adopt	7-1-2012	581-070-0190	12-15-2011	Repeal	1-1-2012
581-053-0170	6-14-2012	Adopt	7-1-2012	581-070-0200	12-15-2011	Repeal	1-1-2012
581-053-0180	6-14-2012	Adopt	7-1-2012	581-070-0210	12-15-2011	Repeal	1-1-2012
581-053-0210	6-14-2012	Adopt	7-1-2012	581-070-0220	12-15-2011	Repeal	1-1-2012
581-053-0220	6-14-2012	Adopt	7-1-2012	581-070-0230	12-15-2011	Repeal	1-1-2012
581-053-0225	6-14-2012	Adopt	7-1-2012	581-070-0240	12-15-2011	Repeal	1-1-2012
581-053-0230	6-14-2012	Adopt	7-1-2012	581-070-0250	12-15-2011	Repeal	1-1-2012
581-053-0240	6-14-2012	Adopt	7-1-2012	581-070-0380	12-15-2011	Repeal	1-1-2012
581-053-0250	6-14-2012	Adopt	7-1-2012	581-070-0390	12-15-2011	Repeal	1-1-2012
581-053-0310	6-14-2012	Adopt	7-1-2012	581-070-0400	12-15-2011	Repeal	1-1-2012
581-053-0320	6-14-2012	Adopt	7-1-2012	581-070-0410	12-15-2011	Repeal	1-1-2012
581-053-0330	6-14-2012	Adopt	7-1-2012	581-070-0420	12-15-2011	Repeal	1-1-2012
581-053-0340	6-14-2012	Adopt	7-1-2012	581-070-0500	12-15-2011	Repeal	1-1-2012
581-053-0410	6-14-2012	Adopt	7-1-2012	581-070-0510	12-15-2011	Repeal	1-1-2012
581-053-0420	6-14-2012	Adopt	7-1-2012	581-071-0005	12-15-2011	Repeal	1-1-2012
581-053-0430	6-14-2012	Adopt	7-1-2012	581-071-0010	12-15-2011	Repeal	1-1-2012
581-053-0440	6-14-2012	Adopt	7-1-2012	584-010-0001	3-9-2012	Amend	4-1-2012
581-053-0445	6-14-2012	Adopt	7-1-2012	584-010-0010	3-9-2012	Amend	4-1-2012
581-053-0507	6-14-2012	Repeal	7-1-2012	584-010-0015	3-9-2012	Amend	4-1-2012
581-053-0511	6-14-2012	Adopt	7-1-2012	584-010-0020	3-9-2012	Amend	4-1-2012
581-053-0512	6-14-2012	Repeal	7-1-2012	584-010-0022	3-9-2012	Adopt	4-1-2012
581-053-0516	6-14-2012	Repeal	7-1-2012	584-010-0025	3-9-2012	Amend	4-1-2012
581-053-0521	6-14-2012	Adopt	7-1-2012	584-010-0030	3-9-2012	Amend	4-1-2012
581-053-0527	6-14-2012	Repeal	7-1-2012	584-010-0035	3-9-2012	Amend	4-1-2012
581-053-0531	6-14-2012	Adopt	7-1-2012	584-010-0045	3-9-2012	Amend	4-1-2012
581-053-0535	6-14-2012	Repeal	7-1-2012	584-010-0050	3-9-2012	Amend	4-1-2012
581-053-0540	6-14-2012	Amend	7-1-2012	584-010-0055	3-9-2012	Amend	4-1-2012
581-053-0545	6-14-2012	Repeal	7-1-2012	584-010-0060	3-9-2012	Amend	4-1-2012
581-053-0550	6-14-2012	Repeal	7-1-2012	584-010-0080	3-9-2012	Repeal	4-1-2012
581-053-0555	6-14-2012	Repeal	7-1-2012	584-010-0090	3-9-2012	Amend	4-1-2012
581-053-0556	6-14-2012	Repeal	7-1-2012	584-010-0100	3-9-2012	Amend	4-1-2012
581-053-0610	6-14-2012	Adopt	7-1-2012	584-010-0140	3-9-2012	Repeal	4-1-2012
581-053-0615	6-14-2012	Adopt	7-1-2012	584-017-1005	3-9-2012	Adopt	4-1-2012
581-053-0620	6-14-2012	Adopt	7-1-2012	584-017-1008	3-9-2012	Adopt	4-1-2012
581-053-0630	6-14-2012	Adopt	7-1-2012	584-017-1010	3-9-2012	Adopt	4-1-2012
581-053-0640	6-14-2012	Adopt	7-1-2012	584-017-1012	3-9-2012	Adopt	4-1-2012
581-060-0005	12-15-2011	Repeal	1-1-2012	584-017-1015	3-9-2012	Adopt	4-1-2012
581-060-0010	12-15-2011	Repeal	1-1-2012	584-017-1020	3-9-2012	Adopt	4-1-2012
581-060-0015	12-15-2011	Repeal	1-1-2012	584-017-1022	3-9-2012	Adopt	4-1-2012
581-060-0020	12-15-2011	Repeal	1-1-2012	584-017-1025	3-9-2012	Adopt	4-1-2012
581-070-0000	12-15-2011	Repeal	1-1-2012	584-017-1028	5-18-2012	Adopt	7-1-2012
581-070-0010	12-15-2011	Repeal	1-1-2012	584-017-1030	3-9-2012	Adopt	4-1-2012
581-070-0020	12-15-2011	Repeal	1-1-2012	584-017-1032	3-9-2012	Adopt	4-1-2012
581-070-0030	12-15-2011	Repeal	1-1-2012	584-017-1035	3-9-2012	Adopt	4-1-2012
581-070-0040	12-15-2011	Repeal	1-1-2012	584-017-1038	3-9-2012	Adopt	4-1-2012
581-070-0050	12-15-2011	Repeal	1-1-2012	584-017-1040	3-9-2012	Adopt	4-1-2012
581-070-0060	12-15-2011	Repeal	1-1-2012	584-017-1042	3-9-2012	Adopt	4-1-2012
581-070-0070	12-15-2011	Repeal	1-1-2012	584-017-1045	3-9-2012	Adopt	4-1-2012
581-070-0080	12-15-2011	Repeal	1-1-2012	584-017-1048	3-9-2012	Adopt	4-1-2012
581-070-0090	12-15-2011	Repeal	1-1-2012	584-017-1050	3-9-2012	Adopt	4-1-2012
581-070-0110	12-15-2011	Repeal	1-1-2012	584-017-1052	3-9-2012	Adopt	4-1-2012

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584-017-1055	3-9-2012	Adopt	4-1-2012	584-100-0016	5-18-2012	Amend	7-1-2012
584-018-0100	3-9-2012	Adopt	4-1-2012	584-100-0017	5-18-2012	Adopt	7-1-2012
584-018-0105	3-9-2012	Adopt	4-1-2012	584-100-0021	5-18-2012	Amend	7-1-2012
584-018-0110	3-9-2012	Adopt	4-1-2012	584-100-0026	5-18-2012	Amend	7-1-2012
584-018-0115	3-9-2012	Adopt	4-1-2012	584-100-0031	5-18-2012	Amend	7-1-2012
584-018-0120	3-9-2012	Adopt	4-1-2012	584-100-0038	5-18-2012	Amend	7-1-2012
584-018-0125	3-9-2012	Adopt	4-1-2012	589-007-0700	12-9-2011	Amend	1-1-2012
584-018-0130	3-9-2012	Adopt	4-1-2012	589-007-0800	12-9-2011	Adopt	1-1-2012
584-018-0135	3-9-2012	Adopt	4-1-2012	603-016-0355	7-1-2012	Repeal	7-1-2012
584-018-0140	3-9-2012	Adopt	4-1-2012	603-016-0360	7-1-2012	Repeal	7-1-2012
584-018-0205	3-9-2012	Adopt	4-1-2012	603-016-0365	7-1-2012	Repeal	7-1-2012
584-018-0205	5-18-2012	Amend	7-1-2012	603-016-0370	7-1-2012	Repeal	7-1-2012
584-018-0305	5-18-2012	Adopt	7-1-2012	603-016-0375	7-1-2012	Repeal	7-1-2012
584-018-0310	5-18-2012	Adopt	7-1-2012	603-016-0380	7-1-2012	Repeal	7-1-2012
584-018-0315	3-9-2012	Adopt	4-1-2012	603-016-0385	7-1-2012	Repeal	7-1-2012
584-018-0405	3-9-2012	Adopt	4-1-2012	603-016-0390	7-1-2012	Repeal	7-1-2012
584-018-0410	3-9-2012	Adopt	4-1-2012	603-018-0001	12-28-2011	Adopt(T)	2-1-2012
584-018-0415	3-9-2012	Adopt	4-1-2012	603-018-0000	7-3-2012	Adopt	8-1-2012
584-018-0505	3-9-2012	Adopt	4-1-2012	603-018-0003	12-28-2011	Adopt(T)	2-1-2012
584-018-0510	3-9-2012	Adopt	4-1-2012	603-018-0005	7-3-2012	Adopt	8-1-2012
584-018-0515	3-9-2012	Adopt	4-1-2012	603-018-0007	12-28-2011	Adopt(T)	2-1-2012
584-023-0005	5-18-2012	Amend	7-1-2012	603-018-0010	7-3-2012	Adopt	8-1-2012
584-023-0015	5-18-2012	Amend	7-1-2012	603-018-0009	12-28-2011	Adopt(T)	2-1-2012
584-036-0010	5-18-2012	Amend	7-1-2012	603-018-0015	7-3-2012	Adopt	8-1-2012
584-036-0015	5-18-2012	Amend	7-1-2012	603-018-0011	12-28-2011	Adopt(T)	2-1-2012
584-036-0055	2-15-2012	Amend	3-1-2012	603-018-0020	7-3-2012	Adopt	8-1-2012
584-036-0055	5-18-2012	Amend	7-1-2012	603-018-0013	12-28-2011	Adopt(T)	2-1-2012
584-036-0057	5-18-2012	Adopt	7-1-2012	603-018-0025	7-3-2012	Adopt	8-1-2012
584-042-0008	2-15-2012	Amend	3-1-2012	603-019-0001	12-28-2011	Adopt	2-1-2012
584-042-0012	2-15-2012	Amend	3-1-2012	603-019-0005	12-28-2011	Adopt	2-1-2012
584-042-0021	2-15-2012	Amend	3-1-2012	603-019-0010	12-28-2011	Adopt	2-1-2012
584-042-0031	2-15-2012	Amend	3-1-2012	603-019-0015	12-28-2011	Adopt	2-1-2012
584-042-0036	2-15-2012	Amend	3-1-2012	603-019-0020	12-28-2011	Adopt	2-1-2012
584-042-0044	2-15-2012	Amend	3-1-2012	603-019-0025	12-28-2011	Adopt	2-1-2012
584-042-0051	2-15-2012	Amend	3-1-2012	603-019-0030	12-28-2011	Adopt	2-1-2012
584-042-0081	2-15-2012	Amend	3-1-2012	603-019-0035	12-28-2011	Adopt	2-1-2012
584-050-0021	5-18-2012	Adopt	7-1-2012	603-019-0040	12-28-2011	Adopt	2-1-2012
584-060-0002	5-18-2012	Amend	7-1-2012	603-024-0211	5-15-2012	Amend	6-1-2012
584-060-0051	2-15-2012	Amend(T)	3-1-2012	603-024-0592	7-1-2012	Amend	5-1-2012
584-060-0062	5-18-2012	Amend	7-1-2012	603-025-0215	6-1-2012	Adopt	7-1-2012
584-060-0250	1-15-2012	Adopt	1-1-2012	603-025-0225	6-1-2012	Adopt	7-1-2012
584-066-0001	5-18-2012	Adopt	7-1-2012	603-025-0235	6-1-2012	Adopt	7-1-2012
584-066-0010	5-18-2012	Adopt	7-1-2012	603-025-0245	6-1-2012	Adopt	7-1-2012
584-070-0112	5-18-2012	Amend	7-1-2012	603-025-0255	6-1-2012	Adopt	7-1-2012
584-070-0132	5-18-2012	Amend	7-1-2012	603-025-0265	6-1-2012	Adopt	7-1-2012
584-070-0271	5-18-2012	Amend	7-1-2012	603-025-0275	6-1-2012	Adopt	7-1-2012
584-070-0431	5-18-2012	Amend	7-1-2012	603-027-0410	12-14-2011	Amend	1-1-2012
584-070-0441	5-18-2012	Adopt	7-1-2012	603-027-0420	12-14-2011	Amend	1-1-2012
584-070-0451	5-18-2012	Adopt	7-1-2012	603-027-0430	12-14-2011	Amend	1-1-2012
584-080-0151	5-18-2012	Amend	7-1-2012	603-027-0440	12-14-2011	Amend	1-1-2012
584-080-0152	5-18-2012	Amend	7-1-2012	603-027-0490	12-14-2011	Amend	1-1-2012
584-080-0161	5-18-2012	Amend	7-1-2012	603-028-0710	5-15-2012	Adopt	6-1-2012
584-090-0100	5-18-2012	Adopt	7-1-2012	603-028-0715	5-15-2012	Adopt	6-1-2012
584-090-0105	5-18-2012	Adopt	7-1-2012	603-028-0720	5-15-2012	Adopt	6-1-2012
584-090-0110	5-18-2012	Adopt	7-1-2012	603-028-0725	5-15-2012	Adopt	6-1-2012
584-100-0011	5-18-2012	Amend	7-1-2012	603-028-0730	5-15-2012	Adopt	6-1-2012

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603-028-0740	5-15-2012	Adopt	6-1-2012	603-057-0500	7-10-2012	Amend	8-1-2012
603-031-0105	7-1-2012	Repeal	7-1-2012	603-057-0525	7-10-2012	Amend	8-1-2012
603-031-0111	7-1-2012	Repeal	7-1-2012	603-059-0020	1-1-2013	Amend	7-1-2012
603-031-0112	7-1-2012	Repeal	7-1-2012	603-061-0005	7-1-2012	Repeal	7-1-2012
603-031-0113	7-1-2012	Repeal	7-1-2012	603-062-0005	7-1-2012	Repeal	7-1-2012
603-031-0114	7-1-2012	Repeal	7-1-2012	603-062-0010	7-1-2012	Repeal	7-1-2012
603-031-0116	7-1-2012	Repeal	7-1-2012	603-062-0015	7-1-2012	Repeal	7-1-2012
603-031-0117	7-1-2012	Repeal	7-1-2012	603-062-0020	7-1-2012	Repeal	7-1-2012
603-031-0120	7-1-2012	Repeal	7-1-2012	603-063-0005	7-1-2012	Repeal	7-1-2012
603-031-0125	7-1-2012	Repeal	7-1-2012	603-063-0010	7-1-2012	Repeal	7-1-2012
603-031-0140	7-1-2012	Repeal	7-1-2012	603-063-0015	7-1-2012	Repeal	7-1-2012
603-031-0180	7-1-2012	Repeal	7-1-2012	603-063-0020	7-1-2012	Repeal	7-1-2012
603-031-0185	7-1-2012	Repeal	7-1-2012	603-063-0025	7-1-2012	Repeal	7-1-2012
603-050-0100	7-1-2012	Repeal	7-1-2012	603-064-0005	7-1-2012	Repeal	7-1-2012
603-051-0365	2-9-2012	Amend	3-1-2012	603-064-0050	7-1-2012	Repeal	7-1-2012
603-051-0366	2-9-2012	Adopt	3-1-2012	603-064-0100	7-1-2012	Repeal	7-1-2012
603-051-0370	2-9-2012	Amend	3-1-2012	603-064-0105	7-1-2012	Repeal	7-1-2012
603-051-0375	2-9-2012	Amend	3-1-2012	603-064-0110	7-1-2012	Repeal	7-1-2012
603-051-0380	2-9-2012	Repeal	3-1-2012	603-064-0115	7-1-2012	Repeal	7-1-2012
603-051-0385	2-9-2012	Repeal	3-1-2012	603-064-0120	7-1-2012	Repeal	7-1-2012
603-051-0390	2-9-2012	Amend	3-1-2012	603-064-0130	7-1-2012	Repeal	7-1-2012
603-051-0395	2-9-2012	Amend	3-1-2012	603-064-0200	7-1-2012	Repeal	7-1-2012
603-051-0775	2-1-2012	Adopt	3-1-2012	603-064-0205	7-1-2012	Repeal	7-1-2012
603-051-0777	2-1-2012	Adopt	3-1-2012	603-065-0005	7-1-2012	Repeal	7-1-2012
603-051-0779	2-1-2012	Adopt	3-1-2012	603-065-0010	7-1-2012	Repeal	7-1-2012
603-051-0780	2-1-2012	Adopt	3-1-2012	603-065-0015	7-1-2012	Repeal	7-1-2012
603-051-0785	2-1-2012	Adopt	3-1-2012	603-065-0017	7-1-2012	Repeal	7-1-2012
603-052-0115	3-26-2012	Amend	5-1-2012	603-065-0020	7-1-2012	Repeal	7-1-2012
603-052-0116	3-26-2012	Amend	5-1-2012	603-065-0023	7-1-2012	Repeal	7-1-2012
603-052-0117	3-22-2012	Repeal	5-1-2012	603-065-0025	7-1-2012	Repeal	7-1-2012
603-052-0118	3-26-2012	Amend	5-1-2012	603-065-0032	7-1-2012	Repeal	7-1-2012
603-052-0126	3-26-2012	Amend	5-1-2012	603-065-0035	7-1-2012	Repeal	7-1-2012
603-052-0150	3-26-2012	Amend	5-1-2012	603-065-0040	7-1-2012	Repeal	7-1-2012
603-052-0201	3-22-2012	Repeal	5-1-2012	603-065-0045	7-1-2012	Repeal	7-1-2012
603-052-0206	3-22-2012	Repeal	5-1-2012	603-065-0050	7-1-2012	Repeal	7-1-2012
603-052-0207	3-22-2012	Repeal	5-1-2012	603-065-0055	7-1-2012	Repeal	7-1-2012
603-052-0208	3-22-2012	Repeal	5-1-2012	603-065-0060	7-1-2012	Repeal	7-1-2012
603-052-0209	3-22-2012	Repeal	5-1-2012	603-065-0065	7-1-2012	Repeal	7-1-2012
603-052-0334	3-22-2012	Repeal	5-1-2012	603-065-0070	7-1-2012	Repeal	7-1-2012
603-052-0800	3-22-2012	Repeal	5-1-2012	603-065-0075	7-1-2012	Repeal	7-1-2012
603-052-1020	6-6-2012	Amend	7-1-2012	603-065-0080	7-1-2012	Repeal	7-1-2012
603-052-1025	3-26-2012	Amend	5-1-2012	603-065-0085	7-1-2012	Repeal	7-1-2012
603-052-1230	3-22-2012	Amend	5-1-2012	603-066-0005	7-1-2012	Repeal	7-1-2012
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603-057-0001	6-1-2012	Amend	7-1-2012	603-066-0015	7-1-2012	Repeal	7-1-2012
603-057-0001	1-1-2013	Amend	2-1-2012	603-066-0020	7-1-2012	Repeal	7-1-2012
603-057-0006	7-10-2012	Amend	8-1-2012	603-066-0025	7-1-2012	Repeal	7-1-2012
603-057-0100	6-1-2012	Amend	7-1-2012	603-066-0030	7-1-2012	Repeal	7-1-2012
603-057-0100	1-1-2013	Amend	2-1-2012	603-066-0100	7-1-2012	Repeal	7-1-2012
603-057-0106	1-1-2013	Amend	6-1-2012	603-066-0110	7-1-2012	Repeal	7-1-2012
603-057-0120	7-10-2012	Amend	8-1-2012	603-066-0200	7-1-2012	Repeal	7-1-2012
603-057-0127	6-1-2012	Amend	7-1-2012	603-066-0205	7-1-2012	Repeal	7-1-2012
603-057-0127	1-1-2013	Amend	2-1-2012	603-066-0210	7-1-2012	Repeal	7-1-2012
603-057-0135	7-10-2012	Amend	8-1-2012	603-066-0300	7-1-2012	Repeal	7-1-2012
603-057-0150	7-10-2012	Amend	8-1-2012	603-066-0305	7-1-2012	Repeal	7-1-2012

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603-067-0020	7-1-2012	Repeal	7-1-2012	603-095-1400	6-1-2012	Amend	7-1-2012
603-067-0035	7-1-2012	Repeal	7-1-2012	603-095-1420	1-12-2012	Amend	2-1-2012
603-068-0005	7-1-2012	Repeal	7-1-2012	603-095-1420	6-1-2012	Amend	7-1-2012
603-068-0010	7-1-2012	Repeal	7-1-2012	603-095-1440	1-12-2012	Amend	2-1-2012
603-068-0015	7-1-2012	Repeal	7-1-2012	603-095-1440	6-1-2012	Amend	7-1-2012
603-068-0100	7-1-2012	Repeal	7-1-2012	603-095-1460	1-12-2012	Adopt	2-1-2012
603-068-0105	7-1-2012	Repeal	7-1-2012	603-095-1460	6-1-2012	Adopt	7-1-2012
603-068-0110	7-1-2012	Repeal	7-1-2012	603-100-0000	1-1-2013	Amend	7-1-2012
603-068-0200	7-1-2012	Repeal	7-1-2012	603-100-0010	1-1-2013	Amend	7-1-2012
603-068-0205	7-1-2012	Repeal	7-1-2012	603-100-0050	1-1-2013	Adopt	7-1-2012
603-068-0210	7-1-2012	Repeal	7-1-2012	603-105-0010	7-1-2012	Repeal	7-1-2012
603-068-0300	7-1-2012	Repeal	7-1-2012	629-035-0105	1-1-2012	Amend	1-1-2012
603-068-0305	7-1-2012	Repeal	7-1-2012	632-001-0020	12-14-2011	Adopt	1-1-2012
603-068-0310	7-1-2012	Repeal	7-1-2012	635-003-0003	5-1-2012	Amend	6-1-2012
603-068-0400	7-1-2012	Repeal	7-1-2012	635-003-0085	7-1-2012	Amend	7-1-2012
603-068-0405	7-1-2012	Repeal	7-1-2012	635-004-0003	7-1-2012	Renumber	8-1-2012
603-068-0410	7-1-2012	Repeal	7-1-2012	635-004-0005	4-24-2012	Amend	6-1-2012
603-069-0005	7-1-2012	Repeal	7-1-2012	635-004-0005	7-1-2012	Repeal	8-1-2012
603-069-0010	7-1-2012	Repeal	7-1-2012	635-004-0009	4-24-2012	Amend	6-1-2012
603-069-0015	7-1-2012	Repeal	7-1-2012	635-004-0009	7-1-2012	Repeal	8-1-2012
603-069-0020	7-1-2012	Repeal	7-1-2012	635-004-0011	7-1-2012	Renumber	8-1-2012
603-069-0025	7-1-2012	Repeal	7-1-2012	635-004-0012	7-1-2012	Am. & Ren.	8-1-2012
603-069-0030	7-1-2012	Repeal	7-1-2012	635-004-0013	7-1-2012	Am. & Ren.	8-1-2012
603-069-0032	7-1-2012	Repeal	7-1-2012	635-004-0014	7-1-2012	Renumber	8-1-2012
603-069-0034	7-1-2012	Repeal	7-1-2012	635-004-0016	7-1-2012	Repeal	8-1-2012
603-069-0035	7-1-2012	Repeal	7-1-2012	635-004-0017	4-24-2012	Amend	6-1-2012
603-069-0040	7-1-2012	Repeal	7-1-2012	635-004-0017	7-1-2012	Repeal	8-1-2012
603-070-0025	7-1-2012	Repeal	7-1-2012	635-004-0018	1-1-2012	Amend	2-1-2012
603-070-0030	7-1-2012	Repeal	7-1-2012	635-004-0018	7-1-2012	Repeal	8-1-2012
603-070-0035	7-1-2012	Repeal	7-1-2012	635-004-0019	1-1-2012	Amend	2-1-2012
603-070-0040	7-1-2012	Repeal	7-1-2012	635-004-0019	5-1-2012	Amend(T)	6-1-2012
603-070-0045	7-1-2012	Repeal	7-1-2012	635-004-0019	5-1-2012	Amend(T)	6-1-2012
603-070-0050	7-1-2012	Repeal	7-1-2012	635-004-0019	7-1-2012	Repeal	8-1-2012
603-070-0055	7-1-2012	Repeal	7-1-2012	635-004-0019(T)	5-1-2012	Suspend	6-1-2012
603-070-0060	7-1-2012	Repeal	7-1-2012	635-004-0019(T)	7-1-2012	Suspend	8-1-2012
603-076-0052	12-8-2011	Amend(T)	1-1-2012	635-004-0020	7-1-2012	Am. & Ren.	8-1-2012
603-085-0000	7-1-2012	Repeal	7-1-2012	635-004-0021	7-1-2012	Am. & Ren.	8-1-2012
603-085-0010	7-1-2012	Repeal	7-1-2012	635-004-0025	7-1-2012	Am. & Ren.	8-1-2012
603-085-0020	7-1-2012	Repeal	7-1-2012	635-004-0026	7-1-2012	Renumber	8-1-2012
603-085-0030	7-1-2012	Repeal	7-1-2012	635-004-0027	1-9-2012	Amend(T)	2-1-2012
603-085-0040	7-1-2012	Repeal	7-1-2012	635-004-0027	7-1-2012	Am. & Ren.	8-1-2012
603-085-0050	7-1-2012	Repeal	7-1-2012	635-004-0029	7-1-2012	Repeal	8-1-2012
603-085-0060	7-1-2012	Repeal	7-1-2012	635-004-0033	1-1-2012	Amend	2-1-2012
603-085-0070	7-1-2012	Repeal	7-1-2012	635-004-0033	6-1-2012	Amend(T)	7-1-2012
603-085-0080	7-1-2012	Repeal	7-1-2012	635-004-0033	7-1-2012	Repeal	8-1-2012
603-095-0200	1-12-2012	Repeal	2-1-2012	635-004-0035	7-1-2012	Am. & Ren.	8-1-2012
603-095-0200	6-1-2012	Repeal	7-1-2012	635-004-0036	7-1-2012	Am. & Ren.	8-1-2012
603-095-0220	1-12-2012	Repeal	2-1-2012	635-004-0040	7-1-2012	Repeal	8-1-2012
603-095-0220	6-1-2012	Repeal	7-1-2012	635-004-0042	7-1-2012	Am. & Ren.	8-1-2012
603-095-0240	1-12-2012	Repeal	2-1-2012	635-004-0048	7-1-2012	Am. & Ren.	8-1-2012
603-095-0240	6-1-2012	Repeal	7-1-2012	635-004-0050	7-1-2012	Am. & Ren.	8-1-2012
603-095-0260	1-12-2012	Repeal	2-1-2012	635-004-0052	7-1-2012	Repeal	8-1-2012
603-095-0260	6-1-2012	Repeal	7-1-2012	635-004-0055	7-1-2012	Am. & Ren.	8-1-2012
603-095-0280	1-12-2012	Repeal	2-1-2012	635-004-0060	7-1-2012	Am. & Ren.	8-1-2012
603-095-0280	6-1-2012	Repeal	7-1-2012	635-004-0065	7-1-2012	Am. & Ren.	8-1-2012

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635-004-0068	7-1-2012	Am. & Ren.	8-1-2012	635-004-0495	7-1-2012	Adopt	8-1-2012
635-004-0070	7-1-2012	Am. & Ren.	8-1-2012	635-004-0500	7-1-2012	Adopt	8-1-2012
635-004-0075	7-1-2012	Repeal	8-1-2012	635-004-0505	7-1-2012	Adopt	8-1-2012
635-004-0080	7-1-2012	Am. & Ren.	8-1-2012	635-004-0510	7-1-2012	Adopt	8-1-2012
635-004-0085	7-1-2012	Am. & Ren.	8-1-2012	635-004-0520	7-1-2012	Adopt	8-1-2012
635-004-0090	7-1-2012	Am. & Ren.	8-1-2012	635-004-0525	7-1-2012	Adopt	8-1-2012
635-004-0100	7-1-2012	Repeal	8-1-2012	635-004-0535	7-1-2012	Adopt	8-1-2012
635-004-0110	7-1-2012	Repeal	8-1-2012	635-004-0540	7-1-2012	Adopt	8-1-2012
635-004-0125	7-1-2012	Am. & Ren.	8-1-2012	635-004-0550	7-1-2012	Adopt	8-1-2012
635-004-0130	7-1-2012	Am. & Ren.	8-1-2012	635-004-0555	7-1-2012	Adopt	8-1-2012
635-004-0135	7-1-2012	Am. & Ren.	8-1-2012	635-004-0560	7-1-2012	Adopt	8-1-2012
635-004-0140	7-1-2012	Renumber	8-1-2012	635-004-0565	7-1-2012	Adopt	8-1-2012
635-004-0145	7-1-2012	Am. & Ren.	8-1-2012	635-004-0570	7-1-2012	Adopt	8-1-2012
635-004-0150	7-1-2012	Am. & Ren.	8-1-2012	635-004-0575	7-1-2012	Adopt	8-1-2012
635-004-0160	7-1-2012	Am. & Ren.	8-1-2012	635-004-0580	7-1-2012	Adopt	8-1-2012
635-004-0165	7-1-2012	Am. & Ren.	8-1-2012	635-004-0585	7-1-2012	Adopt	8-1-2012
635-004-0170	7-1-2012	Am. & Ren.	8-1-2012	635-004-0590	7-1-2012	Adopt	8-1-2012
635-004-0200	7-1-2012	Adopt	8-1-2012	635-004-0610	7-1-2012	Adopt	8-1-2012
635-004-0205	7-1-2012	Adopt	8-1-2012	635-004-0625	7-1-2012	Adopt	8-1-2012
635-004-0210	7-1-2012	Adopt	8-1-2012	635-004-0630	7-1-2012	Adopt	8-1-2012
635-004-0230	7-1-2012	Adopt	8-1-2012	635-004-0650	7-1-2012	Adopt	8-1-2012
635-004-0270	7-1-2012	Adopt	8-1-2012	635-004-0655	7-1-2012	Adopt	8-1-2012
635-004-0275	7-1-2012	Adopt	8-1-2012	635-004-0660	7-1-2012	Adopt	8-1-2012
635-004-0275	7-1-2012	Amend(T)	8-1-2012	635-004-0665	7-1-2012	Adopt	8-1-2012
635-004-0285	7-1-2012	Adopt	8-1-2012	635-004-0670	7-1-2012	Adopt	8-1-2012
635-004-0300	7-1-2012	Adopt	8-1-2012	635-004-0675	7-1-2012	Adopt	8-1-2012
635-004-0305	7-1-2012	Adopt	8-1-2012	635-004-0680	7-1-2012	Adopt	8-1-2012
635-004-0310	7-1-2012	Adopt	8-1-2012	635-004-0685	7-1-2012	Adopt	8-1-2012
635-004-0315	7-1-2012	Adopt	8-1-2012	635-004-0690	7-1-2012	Adopt	8-1-2012
635-004-0320	7-1-2012	Adopt	8-1-2012	635-005-0001	7-1-2012	Am. & Ren.	8-1-2012
635-004-0325	7-1-2012	Adopt	8-1-2012	635-005-0002	7-1-2012	Repeal	8-1-2012
635-004-0330	7-1-2012	Adopt	8-1-2012	635-005-0003	7-1-2012	Am. & Ren.	8-1-2012
635-004-0335	7-1-2012	Adopt	8-1-2012	635-005-0005	7-1-2012	Am. & Ren.	8-1-2012
635-004-0350	7-1-2012	Adopt	8-1-2012	635-005-0015	7-1-2012	Repeal	8-1-2012
635-004-0355	7-1-2012	Adopt	8-1-2012	635-005-0016	7-1-2012	Repeal	8-1-2012
635-004-0355	7-1-2012	Amend(T)	8-1-2012	635-005-0020	7-1-2012	Am. & Ren.	8-1-2012
635-004-0370	7-1-2012	Adopt	8-1-2012	635-005-0030	7-1-2012	Am. & Ren.	8-1-2012
635-004-0375	7-1-2012	Adopt	8-1-2012	635-005-0031	7-1-2012	Repeal	8-1-2012
635-004-0380	7-1-2012	Adopt	8-1-2012	635-005-0032	7-1-2012	Am. & Ren.	8-1-2012
635-004-0385	7-1-2012	Adopt	8-1-2012	635-005-0035	7-1-2012	Repeal	8-1-2012
635-004-0390	7-1-2012	Adopt	8-1-2012	635-005-0040	7-1-2012	Renumber	8-1-2012
635-004-0395	7-1-2012	Adopt	8-1-2012	635-005-0042	7-1-2012	Am. & Ren.	8-1-2012
635-004-0400	7-1-2012	Adopt	8-1-2012	635-005-0045	12-1-2011	Amend(T)	1-1-2012
635-004-0405	7-1-2012	Adopt	8-1-2012	635-005-0045	12-15-2011	Amend(T)	1-1-2012
635-004-0410	7-1-2012	Adopt	8-1-2012	635-005-0045	5-1-2012	Amend	6-1-2012
635-004-0415	7-1-2012	Adopt	8-1-2012	635-005-0045	7-1-2012	Am. & Ren.	8-1-2012
635-004-0420	7-1-2012	Adopt	8-1-2012	635-005-0045(T)	12-15-2011	Suspend	1-1-2012
635-004-0445	7-1-2012	Adopt	8-1-2012	635-005-0047	7-1-2012	Am. & Ren.	8-1-2012
635-004-0455	7-1-2012	Adopt	8-1-2012	635-005-0048	7-1-2012	Repeal	8-1-2012
635-004-0460	7-1-2012	Adopt	8-1-2012	635-005-0049	7-1-2012	Am. & Ren.	8-1-2012
635-004-0465	7-1-2012	Adopt	8-1-2012	635-005-0055	12-1-2011	Amend(T)	1-1-2012
635-004-0470	7-1-2012	Adopt	8-1-2012	635-005-0055	5-1-2012	Amend	6-1-2012
635-004-0475	7-1-2012	Adopt	8-1-2012	635-005-0055	7-1-2012	Am. & Ren.	8-1-2012
635-004-0480	7-1-2012	Adopt	8-1-2012	635-005-0060	7-1-2012	Am. & Ren.	8-1-2012
635-004-0485	7-1-2012	Adopt	8-1-2012	635-005-0063	7-1-2012	Am. & Ren.	8-1-2012

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635-005-0064	7-1-2012	Am. & Ren.	8-1-2012	635-005-0360	7-1-2012	Adopt	8-1-2012
635-005-0065	7-1-2012	Am. & Ren.	8-1-2012	635-005-0365	7-1-2012	Adopt	8-1-2012
635-005-0066	7-1-2012	Am. & Ren.	8-1-2012	635-005-0370	7-1-2012	Adopt	8-1-2012
635-005-0067	7-1-2012	Am. & Ren.	8-1-2012	635-005-0375	7-1-2012	Adopt	8-1-2012
635-005-0068	7-1-2012	Am. & Ren.	8-1-2012	635-005-0380	7-1-2012	Adopt	8-1-2012
635-005-0069	7-1-2012	Am. & Ren.	8-1-2012	635-005-0385	7-1-2012	Adopt	8-1-2012
635-005-0070	7-1-2012	Renumber	8-1-2012	635-005-0390	7-1-2012	Adopt	8-1-2012
635-005-0075	7-1-2012	Am. & Ren.	8-1-2012	635-005-0395	7-1-2012	Adopt	8-1-2012
635-005-0080	7-1-2012	Renumber	8-1-2012	635-005-0400	7-1-2012	Adopt	8-1-2012
635-005-0082	7-1-2012	Renumber	8-1-2012	635-005-0405	7-1-2012	Adopt	8-1-2012
635-005-0084	7-1-2012	Am. & Ren.	8-1-2012	635-005-0410	7-1-2012	Adopt	8-1-2012
635-005-0085	7-1-2012	Am. & Ren.	8-1-2012	635-005-0415	7-1-2012	Adopt	8-1-2012
635-005-0090	7-1-2012	Repeal	8-1-2012	635-005-0420	7-1-2012	Adopt	8-1-2012
635-005-0095	7-1-2012	Repeal	8-1-2012	635-005-0425	7-1-2012	Adopt	8-1-2012
635-005-0100	7-1-2012	Repeal	8-1-2012	635-005-0430	7-1-2012	Adopt	8-1-2012
635-005-0115	7-1-2012	Repeal	8-1-2012	635-005-0435	7-1-2012	Adopt	8-1-2012
635-005-0120	7-1-2012	Repeal	8-1-2012	635-005-0440	7-1-2012	Adopt	8-1-2012
635-005-0130	7-1-2012	Repeal	8-1-2012	635-005-0445	7-1-2012	Adopt	8-1-2012
635-005-0135	7-1-2012	Repeal	8-1-2012	635-005-0450	7-1-2012	Adopt	8-1-2012
635-005-0140	7-1-2012	Am. & Ren.	8-1-2012	635-005-0480	7-1-2012	Adopt	8-1-2012
635-005-0145	7-1-2012	Am. & Ren.	8-1-2012	635-005-0485	7-1-2012	Adopt	8-1-2012
635-005-0150	7-1-2012	Renumber	8-1-2012	635-005-0490	7-1-2012	Adopt	8-1-2012
635-005-0160	7-1-2012	Renumber	8-1-2012	635-005-0500	7-1-2012	Adopt	8-1-2012
635-005-0170	7-1-2012	Am. & Ren.	8-1-2012	635-005-0510	7-1-2012	Adopt	8-1-2012
635-005-0175	7-1-2012	Am. & Ren.	8-1-2012	635-005-0515	7-1-2012	Adopt	8-1-2012
635-005-0180	7-1-2012	Am. & Ren.	8-1-2012	635-005-0520	7-1-2012	Adopt	8-1-2012
635-005-0185	7-1-2012	Am. & Ren.	8-1-2012	635-005-0525	7-1-2012	Adopt	8-1-2012
635-005-0186	7-1-2012	Renumber	8-1-2012	635-005-0565	7-1-2012	Adopt	8-1-2012
635-005-0190	7-1-2012	Am. & Ren.	8-1-2012	635-005-0570	7-1-2012	Adopt	8-1-2012
635-005-0195	7-1-2012	Am. & Ren.	8-1-2012	635-005-0575	7-1-2012	Adopt	8-1-2012
635-005-0200	7-1-2012	Renumber	8-1-2012	635-005-0580	7-1-2012	Adopt	8-1-2012
635-005-0205	7-1-2012	Am. & Ren.	8-1-2012	635-005-0585	7-1-2012	Adopt	8-1-2012
635-005-0210	7-1-2012	Am. & Ren.	8-1-2012	635-005-0590	7-1-2012	Adopt	8-1-2012
635-005-0215	7-1-2012	Am. & Ren.	8-1-2012	635-005-0595	7-1-2012	Adopt	8-1-2012
635-005-0220	7-1-2012	Am. & Ren.	8-1-2012	635-005-0600	7-1-2012	Adopt	8-1-2012
635-005-0225	7-1-2012	Adopt	8-1-2012	635-005-0605	7-1-2012	Adopt	8-1-2012
635-005-0230	7-1-2012	Adopt	8-1-2012	635-005-0610	7-1-2012	Adopt	8-1-2012
635-005-0235	7-1-2012	Adopt	8-1-2012	635-005-0615	7-1-2012	Adopt	8-1-2012
635-005-0245	7-1-2012	Adopt	8-1-2012	635-005-0620	7-1-2012	Adopt	8-1-2012
635-005-0250	7-1-2012	Adopt	8-1-2012	635-005-0650	7-1-2012	Adopt	8-1-2012
635-005-0255	7-1-2012	Adopt	8-1-2012	635-005-0675	7-1-2012	Adopt	8-1-2012
635-005-0260	7-1-2012	Adopt	8-1-2012	635-005-0680	7-1-2012	Adopt	8-1-2012
635-005-0265	7-1-2012	Adopt	8-1-2012	635-005-0685	7-1-2012	Adopt	8-1-2012
635-005-0270	7-1-2012	Adopt	8-1-2012	635-005-0690	7-1-2012	Adopt	8-1-2012
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635-005-0280	7-1-2012	Adopt	8-1-2012	635-005-0700	7-1-2012	Adopt	8-1-2012
635-005-0305	7-1-2012	Adopt	8-1-2012	635-005-0705	7-1-2012	Adopt	8-1-2012
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635-005-0315	7-1-2012	Adopt	8-1-2012	635-005-0715	7-1-2012	Adopt	8-1-2012
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635-005-0325	7-1-2012	Adopt	8-1-2012	635-005-0725	7-1-2012	Adopt	8-1-2012
635-005-0330	7-1-2012	Adopt	8-1-2012	635-005-0730	7-1-2012	Adopt	8-1-2012
635-005-0335	7-1-2012	Adopt	8-1-2012	635-005-0735	7-1-2012	Adopt	8-1-2012
635-005-0340	7-1-2012	Adopt	8-1-2012	635-005-0740	7-1-2012	Adopt	8-1-2012
635-005-0345	7-1-2012	Adopt	8-1-2012	635-005-0745	7-1-2012	Adopt	8-1-2012
635-005-0355	7-4-2012	Amend(T)	8-1-2012	635-005-0750	7-1-2012	Adopt	8-1-2012

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635-005-0755	7-1-2012	Adopt	8-1-2012	635-006-0800	7-1-2012	Repeal	8-1-2012
635-005-0760	7-1-2012	Adopt	8-1-2012	635-006-0810	7-1-2012	Repeal	8-1-2012
635-005-0765	7-1-2012	Adopt	8-1-2012	635-006-0820	7-1-2012	Repeal	8-1-2012
635-005-0770	7-1-2012	Adopt	8-1-2012	635-006-0830	7-1-2012	Repeal	8-1-2012
635-005-0775	7-1-2012	Adopt	8-1-2012	635-006-0840	7-1-2012	Repeal	8-1-2012
635-005-0790	7-1-2012	Adopt	8-1-2012	635-006-0850	7-1-2012	Repeal	8-1-2012
635-005-0795	7-1-2012	Adopt	8-1-2012	635-006-0870	7-1-2012	Repeal	8-1-2012
635-005-0800	7-1-2012	Adopt	8-1-2012	635-006-0880	7-1-2012	Repeal	8-1-2012
635-005-0805	7-1-2012	Adopt	8-1-2012	635-006-0890	7-1-2012	Repeal	8-1-2012
635-005-0810	7-1-2012	Adopt	8-1-2012	635-006-0900	7-1-2012	Repeal	8-1-2012
635-005-0815	7-1-2012	Adopt	8-1-2012	635-006-0910	7-1-2012	Repeal	8-1-2012
635-005-0820	7-1-2012	Adopt	8-1-2012	635-006-0915	7-1-2012	Repeal	8-1-2012
635-005-0825	7-1-2012	Adopt	8-1-2012	635-006-0930	7-1-2012	Repeal	8-1-2012
635-005-0830	7-1-2012	Adopt	8-1-2012	635-006-0940	7-1-2012	Repeal	8-1-2012
635-005-0835	7-1-2012	Adopt	8-1-2012	635-006-0950	7-1-2012	Repeal	8-1-2012
635-005-0845	7-1-2012	Adopt	8-1-2012	635-006-1005	7-1-2012	Amend	8-1-2012
635-005-0850	7-1-2012	Adopt	8-1-2012	635-006-1010	12-1-2011	Amend(T)	1-1-2012
635-005-0855	7-1-2012	Adopt	8-1-2012	635-006-1010	5-1-2012	Amend	6-1-2012
635-005-0890	7-1-2012	Adopt	8-1-2012	635-006-1010	7-1-2012	Repeal	8-1-2012
635-005-0895	7-1-2012	Adopt	8-1-2012	635-006-1015	12-1-2011	Amend(T)	1-1-2012
635-005-0915	7-1-2012	Adopt	8-1-2012	635-006-1015	5-1-2012	Amend	6-1-2012
635-005-0920	7-1-2012	Adopt	8-1-2012	635-006-1015	7-1-2012	Amend	8-1-2012
635-005-0925	7-1-2012	Adopt	8-1-2012	635-006-1025	7-1-2012	Amend	8-1-2012
635-005-0930	7-1-2012	Adopt	8-1-2012	635-006-1035	7-1-2012	Amend	8-1-2012
635-005-0935	7-1-2012	Adopt	8-1-2012	635-006-1060	7-1-2012	Amend	8-1-2012
635-005-0940	7-1-2012	Adopt	8-1-2012	635-006-1065	12-1-2011	Amend(T)	1-1-2012
635-006-0001	7-1-2012	Amend	8-1-2012	635-006-1065	5-1-2012	Amend	6-1-2012
635-006-0010	7-1-2012	Amend	8-1-2012	635-006-1065	7-1-2012	Amend	8-1-2012
635-006-0133	7-1-2012	Repeal	8-1-2012	635-006-1075	4-24-2012	Amend	6-1-2012
635-006-0134	7-1-2012	Amend	8-1-2012	635-006-1075	7-1-2012	Amend	8-1-2012
635-006-0135	7-1-2012	Amend	8-1-2012	635-006-1085	7-1-2012	Amend	8-1-2012
635-006-0140	7-1-2012	Amend	8-1-2012	635-006-1095	5-1-2012	Amend	6-1-2012
635-006-0150	7-1-2012	Amend	8-1-2012	635-006-1095	7-1-2012	Amend	8-1-2012
635-006-0160	7-1-2012	Amend	8-1-2012	635-006-1110	7-1-2012	Repeal	8-1-2012
635-006-0165	7-1-2012	Amend	8-1-2012	635-006-1200	7-1-2012	Amend	8-1-2012
635-006-0205	7-1-2012	Amend	8-1-2012	635-006-1210	7-1-2012	Amend	8-1-2012
635-006-0207	7-1-2012	Amend	8-1-2012	635-008-0123	1-1-2012	Amend	1-1-2012
635-006-0209	7-1-2012	Adopt	8-1-2012	635-008-0135	1-1-2012	Amend	1-1-2012
635-006-0210	1-1-2012	Amend	2-1-2012	635-008-0146	4-24-2012	Amend	6-1-2012
635-006-0210	7-1-2012	Amend	8-1-2012	635-008-0147	4-24-2012	Amend	6-1-2012
635-006-0211	1-1-2012	Amend	2-1-2012	635-008-0151	2-6-2012	Amend(T)	3-1-2012
635-006-0211	7-1-2012	Amend	8-1-2012	635-008-0151	6-11-2012	Amend	7-1-2012
635-006-0212	7-1-2012	Amend	8-1-2012	635-008-0151(T)	6-11-2012	Repeal	7-1-2012
635-006-0212	7-5-2012	Amend(T)	8-1-2012	635-008-0155	1-1-2012	Amend	1-1-2012
635-006-0213	7-1-2012	Amend	8-1-2012	635-010-0170	2-6-2012	Amend(T)	3-1-2012
635-006-0215	1-1-2012	Amend	2-1-2012	635-010-0170	6-11-2012	Amend	7-1-2012
635-006-0215	7-1-2012	Amend	8-1-2012	635-010-0170(T)	6-11-2012	Repeal	7-1-2012
635-006-0215	7-5-2012	Amend(T)	8-1-2012	635-011-0100	1-1-2012	Amend	2-1-2012
635-006-0225	7-1-2012	Amend	8-1-2012	635-012-0020	12-25-2011	Amend(T)	1-1-2012
635-006-0225	7-5-2012	Amend(T)	8-1-2012	635-012-0020(T)	12-25-2011	Suspend	1-1-2012
635-006-0232	1-1-2012	Amend(T)	2-1-2012	635-012-0030	12-25-2011	Suspend	1-1-2012
635-006-0232	2-7-2012	Amend	3-1-2012	635-012-0040	12-25-2011	Suspend	1-1-2012
635-006-0232(T)	2-7-2012	Repeal	3-1-2012	635-012-0050	12-25-2011	Suspend	1-1-2012
635-006-0235	7-1-2012	Amend	8-1-2012	635-012-0060	12-25-2011	Suspend	1-1-2012
635-006-0405	7-1-2012	Amend	8-1-2012	635-013-0003	1-1-2012	Amend	2-1-2012
635-006-0425	7-1-2012	Amend	8-1-2012	635-013-0003	5-1-2012	Amend	6-1-2012

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635-013-0007	7-1-2012	Amend	7-1-2012	635-023-0095(T)	7-1-2012	Suspend	8-1-2012
635-014-0080	1-1-2012	Amend	2-1-2012	635-023-0125	1-1-2012	Amend	2-1-2012
635-014-0090	1-1-2012	Amend	2-1-2012	635-023-0125	2-15-2012	Amend(T)	3-1-2012
635-014-0090	6-1-2012	Amend(T)	7-1-2012	635-023-0125	4-6-2012	Amend(T)	5-1-2012
635-014-0090	6-12-2012	Amend(T)	7-1-2012	635-023-0125	4-14-2012	Amend(T)	5-1-2012
635-014-0090	7-1-2012	Amend	7-1-2012	635-023-0125	5-2-2012	Amend(T)	6-1-2012
635-014-0090	7-1-2012	Amend(T)	8-1-2012	635-023-0125	5-16-2012	Amend(T)	6-1-2012
635-014-0090(T)	7-1-2012	Suspend	8-1-2012	635-023-0125	5-19-2012	Amend(T)	7-1-2012
635-016-0080	1-1-2012	Amend	2-1-2012	635-023-0125	5-26-2012	Amend(T)	7-1-2012
635-016-0090	1-1-2012	Amend	2-1-2012	635-023-0125(T)	4-6-2012	Suspend	5-1-2012
635-016-0090	7-1-2012	Amend	7-1-2012	635-023-0125(T)	4-14-2012	Suspend	5-1-2012
635-017-0080	1-1-2012	Amend	2-1-2012	635-023-0125(T)	5-2-2012	Suspend	6-1-2012
635-017-0090	1-1-2012	Amend	2-1-2012	635-023-0125(T)	5-16-2012	Suspend	6-1-2012
635-017-0090	1-1-2012	Amend(T)	1-1-2012	635-023-0125(T)	5-19-2012	Suspend	7-1-2012
635-017-0090	3-12-2012	Amend	4-1-2012	635-023-0125(T)	5-26-2012	Suspend	7-1-2012
635-017-0095	1-1-2012	Amend	2-1-2012	635-023-0125(T)	6-16-2012	Suspend	7-1-2012
635-017-0095	2-17-2012	Amend(T)	3-1-2012	635-023-0125(T)	7-9-2012	Suspend	8-1-2012
635-017-0095	2-23-2012	Amend(T)	4-1-2012	635-023-0128	1-1-2012	Amend	2-1-2012
635-017-0095(T)	2-23-2012	Suspend	4-1-2012	635-023-0128	6-16-2012	Amend(T)	7-1-2012
635-018-0080	1-1-2012	Amend	2-1-2012	635-023-0128	7-9-2012	Amend(T)	8-1-2012
635-018-0090	1-1-2012	Amend	2-1-2012	635-023-0128(T)	7-9-2012	Suspend	8-1-2012
635-018-0090	1-1-2012	Amend(T)	2-1-2012	635-023-0130	1-1-2012	Amend	2-1-2012
635-018-0090	3-12-2012	Amend	4-1-2012	635-023-0134	1-1-2012	Amend	2-1-2012
635-018-0090	4-15-2012	Amend(T)	5-1-2012	635-023-0134	4-22-2012	Amend(T)	6-1-2012
635-018-0090	6-4-2012	Amend(T)	7-1-2012	635-039-0080	1-1-2012	Amend	2-1-2012
635-018-0090(T)	4-15-2012	Suspend	5-1-2012	635-039-0080	4-24-2012	Amend	6-1-2012
635-018-0090(T)	6-4-2012	Suspend	7-1-2012	635-039-0085	4-24-2012	Amend	6-1-2012
635-019-0080	1-1-2012	Amend	2-1-2012	635-039-0085	7-5-2012	Amend(T)	8-1-2012
635-019-0090	1-1-2012	Amend	2-1-2012	635-039-0090	12-1-2011	Amend(T)	1-1-2012
635-019-0090	5-23-2012	Amend(T)	7-1-2012	635-039-0090	12-15-2011	Amend(T)	1-1-2012
635-019-0090	5-24-2012	Amend(T)	7-1-2012	635-039-0090	1-1-2012	Amend	2-1-2012
635-019-0090	6-11-2012	Amend(T)	7-1-2012	635-039-0090(T)	12-1-2011	Suspend	1-1-2012
635-019-0090	6-22-2012	Amend(T)	8-1-2012	635-039-0090(T)	12-15-2011	Suspend	1-1-2012
635-019-0090	6-27-2012	Amend(T)	8-1-2012	635-041-0020	6-16-2012	Amend(T)	7-1-2012
635-019-0090	7-1-2012	Amend(T)	8-1-2012	635-041-0045	2-1-2012	Amend(T)	3-1-2012
635-019-0090	7-15-2012	Amend(T)	8-1-2012	635-041-0045	2-29-2012	Amend(T)	4-1-2012
635-019-0090(T)	5-24-2012	Suspend	7-1-2012	635-041-0045	5-15-2012	Amend(T)	6-1-2012
635-019-0090(T)	6-11-2012	Suspend	7-1-2012	635-041-0045	7-1-2012	Amend(T)	8-1-2012
635-019-0090(T)	6-12-2012	Suspend	7-1-2012	635-041-0045	7-12-2012	Amend(T)	8-1-2012
635-019-0090(T)	6-22-2012	Suspend	8-1-2012	635-041-0045(T)	2-29-2012	Suspend	4-1-2012
635-019-0090(T)	6-27-2012	Suspend	8-1-2012	635-041-0045(T)	5-15-2012	Suspend	6-1-2012
635-019-0090(T)	7-1-2012	Suspend	8-1-2012	635-041-0045(T)	7-12-2012	Suspend	8-1-2012
635-019-0090(T)	7-15-2012	Suspend	8-1-2012	635-041-0065	2-1-2012	Amend(T)	3-1-2012
635-021-0080	1-1-2012	Amend	2-1-2012	635-041-0065	2-29-2012	Amend(T)	4-1-2012
635-021-0090	1-1-2012	Amend	2-1-2012	635-041-0065	3-5-2012	Amend(T)	4-1-2012
635-021-0090	6-13-2012	Amend(T)	7-1-2012	635-041-0065	3-5-2012	Amend(T)	4-1-2012
635-023-0080	1-1-2012	Amend	2-1-2012	635-041-0065	5-15-2012	Amend(T)	6-1-2012
635-023-0090	1-1-2012	Amend	2-1-2012	635-041-0065(T)	2-29-2012	Suspend	4-1-2012
635-023-0095	1-1-2012	Amend	2-1-2012	635-041-0065(T)	3-5-2012	Suspend	4-1-2012
635-023-0095	1-5-2012	Amend(T)	2-1-2012	635-041-0065(T)	3-5-2012	Suspend	4-1-2012
635-023-0095	2-7-2012	Amend	3-1-2012	635-041-0065(T)	5-15-2012	Suspend	6-1-2012
635-023-0095	2-18-2012	Amend(T)	3-1-2012	635-041-0072	6-21-2012	Amend(T)	8-1-2012
635-023-0095	5-20-2012	Amend(T)	6-1-2012	635-041-0072	7-12-2012	Amend(T)	8-1-2012
635-023-0095	7-1-2012	Amend(T)	8-1-2012	635-041-0072(T)	7-12-2012	Suspend	8-1-2012
635-023-0095(T)	2-7-2012	Repeal	3-1-2012	635-041-0076	6-18-2012	Amend(T)	7-1-2012

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635-041-0076	7-12-2012	Amend(T)	8-1-2012	635-065-0733	1-1-2012	Amend	1-1-2012
635-041-0076(T)	7-3-2012	Suspend	8-1-2012	635-065-0740	1-1-2012	Amend	1-1-2012
635-041-0076(T)	7-12-2012	Suspend	8-1-2012	635-065-0760	1-1-2012	Amend	1-1-2012
635-042-0022	4-3-2012	Amend(T)	5-1-2012	635-066-0000	1-1-2012	Amend	1-1-2012
635-042-0022	4-10-2012	Amend(T)	5-1-2012	635-066-0010	1-1-2012	Amend	1-1-2012
635-042-0022(T)	4-10-2012	Suspend	5-1-2012	635-067-0000	1-1-2012	Amend	1-1-2012
635-042-0027	6-17-2012	Amend(T)	7-1-2012	635-067-0000	6-11-2012	Amend	7-1-2012
635-042-0105	5-24-2012	Amend(T)	7-1-2012	635-067-0004	1-1-2012	Amend	1-1-2012
635-042-0135	1-30-2012	Amend(T)	3-1-2012	635-067-0030	1-1-2012	Amend	1-1-2012
635-042-0145	2-12-2012	Amend(T)	3-1-2012	635-067-0040	1-1-2012	Amend	1-1-2012
635-042-0145	3-18-2012	Amend(T)	4-1-2012	635-068-0000	3-1-2012	Amend	3-1-2012
635-042-0145	3-21-2012	Amend(T)	5-1-2012	635-068-0000	6-11-2012	Amend	7-1-2012
635-042-0145	3-29-2012	Amend(T)	5-1-2012	635-069-0000	2-1-2012	Amend	2-1-2012
635-042-0145	4-1-2012	Amend(T)	5-1-2012	635-069-0000	6-11-2012	Amend	7-1-2012
635-042-0145	4-5-2012	Amend(T)	5-1-2012	635-070-0000	4-1-2012	Amend	4-1-2012
635-042-0145	4-19-2012	Amend(T)	6-1-2012	635-070-0000	6-11-2012	Amend	7-1-2012
635-042-0145	7-2-2012	Amend(T)	8-1-2012	635-071-0000	4-1-2012	Amend	4-1-2012
635-042-0145(T)	3-18-2012	Suspend	4-1-2012	635-071-0000	6-11-2012	Amend	7-1-2012
635-042-0145(T)	3-21-2012	Suspend	5-1-2012	635-072-0000	1-1-2012	Amend	1-1-2012
635-042-0145(T)	3-29-2012	Suspend	5-1-2012	635-073-0000	2-1-2012	Amend	2-1-2012
635-042-0145(T)	4-1-2012	Suspend	5-1-2012	635-073-0000	6-11-2012	Amend	7-1-2012
635-042-0145(T)	4-5-2012	Suspend	5-1-2012	635-073-0065	2-1-2012	Amend	2-1-2012
635-042-0145(T)	4-19-2012	Suspend	6-1-2012	635-073-0070	2-1-2012	Amend	2-1-2012
635-042-0145(T)	7-2-2012	Suspend	8-1-2012	635-078-0011	4-1-2012	Amend	4-1-2012
635-042-0160	2-12-2012	Amend(T)	3-1-2012	635-095-0100	2-10-2012	Adopt	3-1-2012
635-042-0170	4-26-2012	Amend(T)	6-1-2012	635-095-0105	2-10-2012	Adopt	3-1-2012
635-042-0180	2-12-2012	Amend(T)	3-1-2012	635-095-0105	6-11-2012	Amend	7-1-2012
635-043-0051	12-30-2011	Amend(T)	2-1-2012	635-095-0111	2-10-2012	Adopt	3-1-2012
635-050-0045	6-11-2012	Amend	7-1-2012	635-095-0125	2-10-2012	Adopt	3-1-2012
635-050-0047	6-11-2012	Adopt	7-1-2012	635-095-0125	6-11-2012	Amend	7-1-2012
635-050-0050	6-11-2012	Amend	7-1-2012	635-100-0125	3-14-2012	Amend	4-1-2012
635-050-0070	6-11-2012	Amend	7-1-2012	635-170-0000	6-11-2012	Adopt	7-1-2012
635-050-0080	6-11-2012	Amend	7-1-2012	635-435-0000	3-16-2012	Amend	5-1-2012
635-050-0090	6-11-2012	Amend	7-1-2012	635-435-0005	3-16-2012	Amend	5-1-2012
635-050-0100	6-11-2012	Amend	7-1-2012	635-435-0010	3-16-2012	Amend	5-1-2012
635-050-0110	6-11-2012	Amend	7-1-2012	635-435-0015	3-16-2012	Amend	5-1-2012
635-050-0120	6-11-2012	Amend	7-1-2012	635-435-0025	3-16-2012	Amend	5-1-2012
635-050-0130	6-11-2012	Amend	7-1-2012	635-435-0030	3-16-2012	Amend	5-1-2012
635-050-0140	6-11-2012	Amend	7-1-2012	635-435-0035	3-16-2012	Amend	5-1-2012
635-050-0150	6-11-2012	Amend	7-1-2012	635-435-0040	3-16-2012	Amend	5-1-2012
635-050-0170	6-11-2012	Amend	7-1-2012	635-435-0060	3-16-2012	Amend	5-1-2012
635-050-0183	6-11-2012	Amend	7-1-2012	647-010-0010	7-1-2012	Amend	6-1-2012
635-050-0189	6-11-2012	Amend	7-1-2012	656-010-0000	11-30-2011	Amend	1-1-2012
635-050-0210	6-11-2012	Amend	7-1-2012	656-010-0010	11-30-2011	Amend	1-1-2012
635-053-0035	12-21-2011	Amend(T)	2-1-2012	660-007-0000	2-14-2012	Amend	3-1-2012
635-060-0023	4-1-2012	Amend	4-1-2012	660-007-0005	2-14-2012	Amend	3-1-2012
635-060-0046	2-10-2012	Amend(T)	3-1-2012	660-007-0015	2-14-2012	Amend	3-1-2012
635-060-0046	6-11-2012	Amend	7-1-2012	660-007-0018	2-14-2012	Amend	3-1-2012
635-060-0046(T)	6-11-2012	Repeal	7-1-2012	660-007-0020	2-14-2012	Amend	3-1-2012
635-065-0001	1-1-2012	Amend	1-1-2012	660-007-0022	2-14-2012	Amend	3-1-2012
635-065-0015	1-1-2012	Amend	1-1-2012	660-007-0030	2-14-2012	Amend	3-1-2012
635-065-0090	1-1-2012	Amend	1-1-2012	660-007-0033	2-14-2012	Amend	3-1-2012
635-065-0401	1-1-2012	Amend	1-1-2012	660-007-0035	2-14-2012	Amend	3-1-2012
635-065-0625	1-1-2012	Amend	1-1-2012	660-007-0037	2-14-2012	Amend	3-1-2012
635-065-0635	1-1-2012	Amend	1-1-2012	660-007-0045	2-14-2012	Amend	3-1-2012

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660-007-0060	2-14-2012	Amend	3-1-2012	660-025-0210	2-14-2012	Amend	3-1-2012
660-008-0000	2-14-2012	Amend	3-1-2012	660-025-0220	2-14-2012	Amend	3-1-2012
660-008-0005	2-14-2012	Amend	3-1-2012	660-025-0230	2-14-2012	Amend	3-1-2012
660-008-0010	2-14-2012	Amend	3-1-2012	660-025-0250	2-14-2012	Amend	3-1-2012
660-008-0015	2-14-2012	Amend	3-1-2012	660-027-0070	2-14-2012	Amend	3-1-2012
660-008-0020	2-14-2012	Amend	3-1-2012	660-028-0010	2-14-2012	Amend	3-1-2012
660-008-0025	2-14-2012	Amend	3-1-2012	660-028-0020	2-14-2012	Amend	3-1-2012
660-008-0030	2-14-2012	Amend	3-1-2012	660-028-0030	2-14-2012	Amend	3-1-2012
660-008-0035	2-14-2012	Amend	3-1-2012	660-033-0030	12-20-2011	Amend	2-1-2012
660-008-0040	2-14-2012	Amend	3-1-2012	660-033-0030	2-14-2012	Amend	3-1-2012
660-012-0005	1-1-2012	Amend	2-1-2012	660-033-0045	2-14-2012	Adopt	3-1-2012
660-012-0060	1-1-2012	Amend	2-1-2012	660-033-0100	2-14-2012	Amend	3-1-2012
660-018-0005	2-14-2012	Amend	3-1-2012	660-033-0120	11-23-2011	Amend	1-1-2012
660-018-0010	2-14-2012	Amend	3-1-2012	660-033-0120	2-14-2012	Amend	3-1-2012
660-018-0020	1-1-2012	Amend(T)	2-1-2012	660-033-0130	11-23-2011	Amend	1-1-2012
660-018-0020	2-14-2012	Amend	3-1-2012	660-033-0130	2-14-2012	Amend	3-1-2012
660-018-0020(T)	2-14-2012	Repeal	3-1-2012	660-033-0135	2-14-2012	Amend	3-1-2012
660-018-0021	1-1-2012	Amend(T)	2-1-2012	660-035-0000	6-15-2012	Amend	7-1-2012
660-018-0021	2-14-2012	Amend	3-1-2012	660-035-0005	6-15-2012	Adopt	7-1-2012
660-018-0021(T)	2-14-2012	Repeal	3-1-2012	660-035-0010	6-15-2012	Amend	7-1-2012
660-018-0022	1-1-2012	Amend(T)	2-1-2012	660-035-0015	6-15-2012	Adopt	7-1-2012
660-018-0022	2-14-2012	Amend	3-1-2012	660-035-0020	6-15-2012	Amend	7-1-2012
660-018-0022(T)	2-14-2012	Repeal	3-1-2012	660-035-0030	6-15-2012	Amend	7-1-2012
660-018-0025	2-14-2012	Amend	3-1-2012	660-035-0040	6-15-2012	Repeal	7-1-2012
660-018-0030	2-14-2012	Repeal	3-1-2012	660-035-0050	6-15-2012	Amend	7-1-2012
660-018-0035	2-14-2012	Amend	3-1-2012	660-035-0060	6-15-2012	Amend	7-1-2012
660-018-0040	1-1-2012	Amend(T)	2-1-2012	660-035-0070	6-15-2012	Amend	7-1-2012
660-018-0040	2-14-2012	Amend	3-1-2012	660-035-0080	6-15-2012	Repeal	7-1-2012
660-018-0040(T)	2-14-2012	Repeal	3-1-2012	668-010-0015	4-12-2012	Amend	5-1-2012
660-018-0045	2-14-2012	Amend	3-1-2012	668-030-0020	4-12-2012	Amend	5-1-2012
660-018-0050	2-14-2012	Amend	3-1-2012	690-013-0100	2-1-2012	Amend	3-1-2012
660-018-0055	2-14-2012	Amend	3-1-2012	690-013-0310	2-1-2012	Amend	3-1-2012
660-018-0060	2-14-2012	Amend	3-1-2012	690-018-0050	2-1-2012	Amend	3-1-2012
660-018-0085	2-14-2012	Amend	3-1-2012	690-019-0080	2-1-2012	Amend	3-1-2012
660-018-0140	2-14-2012	Repeal	3-1-2012	690-053-0015	2-1-2012	Amend	3-1-2012
660-018-0150	2-14-2012	Amend	3-1-2012	690-053-0030	2-1-2012	Amend	3-1-2012
660-025-0010	2-14-2012	Amend	3-1-2012	690-053-0035	2-1-2012	Amend	3-1-2012
660-025-0020	2-14-2012	Amend	3-1-2012	690-077-0029	2-1-2012	Amend	3-1-2012
660-025-0030	2-14-2012	Amend	3-1-2012	690-077-0031	2-1-2012	Amend	3-1-2012
660-025-0035	2-14-2012	Amend	3-1-2012	690-077-0039	2-1-2012	Amend	3-1-2012
660-025-0040	2-14-2012	Amend	3-1-2012	690-077-0077	2-1-2012	Amend	3-1-2012
660-025-0050	2-14-2012	Amend	3-1-2012	690-240-0010	2-2-2012	Amend	3-1-2012
660-025-0060	2-14-2012	Amend	3-1-2012	690-240-0035	2-2-2012	Amend	3-1-2012
660-025-0070	2-14-2012	Amend	3-1-2012	690-240-0040	2-2-2012	Adopt	3-1-2012
660-025-0080	2-14-2012	Amend	3-1-2012	690-240-0043	2-2-2012	Adopt	3-1-2012
660-025-0085	2-14-2012	Amend	3-1-2012	690-240-0046	2-2-2012	Adopt	3-1-2012
660-025-0090	2-14-2012	Amend	3-1-2012	690-240-0049	2-2-2012	Adopt	3-1-2012
660-025-0100	2-14-2012	Amend	3-1-2012	690-300-0010	2-1-2012	Amend	3-1-2012
660-025-0110	2-14-2012	Amend	3-1-2012	690-310-0020	2-1-2012	Amend	3-1-2012
660-025-0130	2-14-2012	Amend	3-1-2012	690-310-0050	2-1-2012	Amend	3-1-2012
660-025-0140	2-14-2012	Amend	3-1-2012	690-310-0080	2-1-2012	Amend	3-1-2012
660-025-0150	2-14-2012	Amend	3-1-2012	690-310-0090	2-1-2012	Amend	3-1-2012
660-025-0160	2-14-2012	Amend	3-1-2012	690-310-0100	2-1-2012	Amend	3-1-2012
660-025-0170	2-14-2012	Amend	3-1-2012	690-310-0150	2-1-2012	Amend	3-1-2012
660-025-0175	2-14-2012	Amend	3-1-2012	690-315-0050	2-1-2012	Amend	3-1-2012

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690-380-2260	2-1-2012	Amend	3-1-2012	731-146-0025	1-1-2012	Amend	2-1-2012
690-380-3100	2-1-2012	Amend	3-1-2012	731-146-0030	1-1-2012	Amend	2-1-2012
690-380-4000	2-1-2012	Amend	3-1-2012	731-146-0050	1-1-2012	Amend	2-1-2012
690-380-4020	2-1-2012	Amend	3-1-2012	731-146-0060	1-1-2012	Amend	2-1-2012
690-380-6040	2-1-2012	Amend	3-1-2012	731-147-0010	1-1-2012	Amend	2-1-2012
690-382-0600	2-1-2012	Amend	3-1-2012	731-147-0040	1-1-2012	Amend	2-1-2012
690-382-0800	2-1-2012	Amend	3-1-2012	731-147-0060	1-1-2012	Repeal	2-1-2012
690-385-4100	2-1-2012	Amend	3-1-2012	731-148-0010	1-1-2012	Amend	2-1-2012
690-385-4600	2-1-2012	Amend	3-1-2012	731-148-0020	1-1-2012	Repeal	2-1-2012
690-385-7600	2-1-2012	Amend	3-1-2012	731-149-0010	1-1-2012	Amend	2-1-2012
705-001-0000	3-28-2012	Adopt(T)	5-1-2012	734-005-0005	1-1-2012	Adopt	2-1-2012
705-001-0005	3-28-2012	Adopt(T)	5-1-2012	734-005-0010	1-1-2012	Adopt	2-1-2012
705-001-0010	3-28-2012	Adopt(T)	5-1-2012	734-005-0015	1-1-2012	Adopt	2-1-2012
705-010-0005	3-29-2012	Adopt(T)	5-1-2012	734-020-0005	12-22-2011	Amend	2-1-2012
705-010-0010	3-29-2012	Adopt(T)	5-1-2012	734-020-0018	1-27-2012	Adopt	3-1-2012
705-010-0015	3-29-2012	Adopt(T)	5-1-2012	734-020-0019	1-27-2012	Adopt	3-1-2012
705-010-0020	3-29-2012	Adopt(T)	5-1-2012	734-020-0020	3-26-2012	Amend	5-1-2012
705-010-0025	3-29-2012	Adopt(T)	5-1-2012	734-020-0025	3-26-2012	Repeal	5-1-2012
705-010-0030	3-29-2012	Adopt(T)	5-1-2012	734-020-0032	3-26-2012	Repeal	5-1-2012
705-010-0035	3-29-2012	Adopt(T)	5-1-2012	734-020-0034	3-26-2012	Repeal	5-1-2012
705-010-0040	3-29-2012	Adopt(T)	5-1-2012	734-020-0055	12-22-2011	Repeal	2-1-2012
705-010-0045	3-29-2012	Adopt(T)	5-1-2012	734-020-0135	3-26-2012	Repeal	5-1-2012
705-010-0050	3-29-2012	Adopt(T)	5-1-2012	734-020-0140	3-26-2012	Repeal	5-1-2012
705-010-0055	3-29-2012	Adopt(T)	5-1-2012	734-020-0400	3-26-2012	Amend	5-1-2012
705-010-0060	3-29-2012	Adopt(T)	5-1-2012	734-020-0420	3-26-2012	Amend	5-1-2012
715-001-0000	7-2-2012	Adopt(T)	8-1-2012	734-020-0430	3-26-2012	Amend	5-1-2012
715-001-0005	7-2-2012	Adopt(T)	8-1-2012	734-020-0440	3-26-2012	Repeal	5-1-2012
715-001-0010	7-2-2012	Adopt(T)	8-1-2012	734-020-0450	3-26-2012	Repeal	5-1-2012
715-010-0005	7-3-2012	Adopt(T)	8-1-2012	734-020-0460	3-26-2012	Repeal	5-1-2012
715-010-0010	7-3-2012	Adopt(T)	8-1-2012	734-020-0470	3-26-2012	Amend	5-1-2012
715-010-0020	7-3-2012	Adopt(T)	8-1-2012	734-020-0480	3-26-2012	Amend	5-1-2012
731-001-0005	2-21-2012	Amend(T)	4-1-2012	734-020-0485	3-26-2012	Adopt	5-1-2012
731-003-0005	3-21-2012	Adopt	5-1-2012	734-020-0490	3-26-2012	Repeal	5-1-2012
731-003-0005(T)	3-21-2012	Repeal	5-1-2012	734-020-0500	3-26-2012	Amend	5-1-2012
731-030-0010	6-27-2012	Amend	8-1-2012	734-026-0010	1-1-2012	Adopt	2-1-2012
731-030-0030	6-27-2012	Amend	8-1-2012	734-026-0020	1-1-2012	Adopt	2-1-2012
731-030-0040	6-27-2012	Amend	8-1-2012	734-026-0030	1-1-2012	Adopt	2-1-2012
731-030-0050	6-27-2012	Amend	8-1-2012	734-026-0040	1-1-2012	Adopt	2-1-2012
731-030-0080	6-27-2012	Repeal	8-1-2012	734-026-0045	1-1-2012	Adopt	2-1-2012
731-030-0090	6-27-2012	Amend	8-1-2012	734-035-0010	2-24-2012	Amend	4-1-2012
731-030-0100	6-27-2012	Amend	8-1-2012	734-035-0040	2-24-2012	Amend	4-1-2012
731-030-0110	6-27-2012	Amend	8-1-2012	734-051-0010	1-1-2012	Suspend	2-1-2012
731-030-0120	6-27-2012	Amend	8-1-2012	734-051-0010	6-29-2012	Repeal	8-1-2012
731-030-0130	6-27-2012	Amend	8-1-2012	734-051-0020	1-1-2012	Suspend	2-1-2012
731-030-0150	6-27-2012	Amend	8-1-2012	734-051-0020	6-29-2012	Repeal	8-1-2012
731-030-0160	6-27-2012	Amend	8-1-2012	734-051-0035	1-1-2012	Suspend	2-1-2012
731-030-0170	6-27-2012	Adopt	8-1-2012	734-051-0035	6-29-2012	Repeal	8-1-2012
731-035-0020	12-22-2011	Amend	2-1-2012	734-051-0040	1-1-2012	Suspend	2-1-2012
731-035-0040	12-22-2011	Amend	2-1-2012	734-051-0040	6-29-2012	Repeal	8-1-2012
731-035-0050	12-22-2011	Amend	2-1-2012	734-051-0045	1-1-2012	Suspend	2-1-2012
731-035-0060	12-22-2011	Amend	2-1-2012	734-051-0045	6-29-2012	Repeal	8-1-2012
731-035-0070	12-22-2011	Amend	2-1-2012	734-051-0070	1-1-2012	Suspend	2-1-2012
731-035-0080	12-22-2011	Amend	2-1-2012	734-051-0070	6-29-2012	Repeal	8-1-2012
731-146-0010	1-1-2012	Amend	2-1-2012	734-051-0080	1-1-2012	Suspend	2-1-2012
731-146-0015	1-1-2012	Amend	2-1-2012	734-051-0080	6-29-2012	Repeal	8-1-2012

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734-051-0085	1-1-2012	Suspend	2-1-2012	734-051-0510	1-1-2012	Suspend	2-1-2012
734-051-0085	6-29-2012	Repeal	8-1-2012	734-051-0510	6-29-2012	Repeal	8-1-2012
734-051-0095	1-1-2012	Suspend	2-1-2012	734-051-0520	1-1-2012	Suspend	2-1-2012
734-051-0095	6-29-2012	Repeal	8-1-2012	734-051-0520	6-29-2012	Repeal	8-1-2012
734-051-0105	1-1-2012	Suspend	2-1-2012	734-051-0530	1-1-2012	Suspend	2-1-2012
734-051-0105	6-29-2012	Repeal	8-1-2012	734-051-0530	6-29-2012	Repeal	8-1-2012
734-051-0115	1-1-2012	Suspend	2-1-2012	734-051-0540	1-1-2012	Suspend	2-1-2012
734-051-0115	6-29-2012	Repeal	8-1-2012	734-051-0540	6-29-2012	Repeal	8-1-2012
734-051-0125	1-1-2012	Suspend	2-1-2012	734-051-0550	1-1-2012	Suspend	2-1-2012
734-051-0125	6-29-2012	Repeal	8-1-2012	734-051-0550	6-29-2012	Repeal	8-1-2012
734-051-0135	1-1-2012	Suspend	2-1-2012	734-051-0560	1-1-2012	Suspend	2-1-2012
734-051-0135	6-29-2012	Repeal	8-1-2012	734-051-0560	6-29-2012	Repeal	8-1-2012
734-051-0145	1-1-2012	Suspend	2-1-2012	734-051-1010	1-1-2012	Adopt(T)	2-1-2012
734-051-0145	6-29-2012	Repeal	8-1-2012	734-051-1010	6-29-2012	Adopt	8-1-2012
734-051-0155	1-1-2012	Suspend	2-1-2012	734-051-1010(T)	6-29-2012	Repeal	8-1-2012
734-051-0155	6-29-2012	Repeal	8-1-2012	734-051-1020	1-1-2012	Adopt(T)	2-1-2012
734-051-0165	1-1-2012	Suspend	2-1-2012	734-051-1020	6-29-2012	Adopt	8-1-2012
734-051-0165	6-29-2012	Repeal	8-1-2012	734-051-1020(T)	6-29-2012	Repeal	8-1-2012
734-051-0175	1-1-2012	Suspend	2-1-2012	734-051-1030	1-1-2012	Adopt(T)	2-1-2012
734-051-0175	6-29-2012	Repeal	8-1-2012	734-051-1030	6-29-2012	Adopt	8-1-2012
734-051-0185	1-1-2012	Suspend	2-1-2012	734-051-1030(T)	6-29-2012	Repeal	8-1-2012
734-051-0185	6-29-2012	Repeal	8-1-2012	734-051-1040	6-29-2012	Adopt	8-1-2012
734-051-0195	1-1-2012	Suspend	2-1-2012	734-051-1040(T)	6-29-2012	Repeal	8-1-2012
734-051-0195	6-29-2012	Repeal	8-1-2012	734-051-1050	1-1-2012	Adopt(T)	2-1-2012
734-051-0205	1-1-2012	Suspend	2-1-2012	734-051-1050	6-29-2012	Adopt	8-1-2012
734-051-0205	6-29-2012	Repeal	8-1-2012	734-051-1050(T)	6-29-2012	Repeal	8-1-2012
734-051-0215	1-1-2012	Suspend	2-1-2012	734-051-1060	1-1-2012	Adopt(T)	2-1-2012
734-051-0215	6-29-2012	Repeal	8-1-2012	734-051-1060	6-29-2012	Adopt	8-1-2012
734-051-0225	1-1-2012	Suspend	2-1-2012	734-051-1060(T)	6-29-2012	Repeal	8-1-2012
734-051-0225	6-29-2012	Repeal	8-1-2012	734-051-1070	1-1-2012	Adopt(T)	2-1-2012
734-051-0245	1-1-2012	Suspend	2-1-2012	734-051-1070	6-29-2012	Adopt	8-1-2012
734-051-0245	6-29-2012	Repeal	8-1-2012	734-051-1070(T)	6-29-2012	Repeal	8-1-2012
734-051-0255	1-1-2012	Suspend	2-1-2012	734-051-2010	1-1-2012	Adopt(T)	2-1-2012
734-051-0255	6-29-2012	Repeal	8-1-2012	734-051-2010	6-29-2012	Adopt	8-1-2012
734-051-0265	1-1-2012	Suspend	2-1-2012	734-051-2010(T)	6-29-2012	Repeal	8-1-2012
734-051-0265	6-29-2012	Repeal	8-1-2012	734-051-2020	1-1-2012	Adopt(T)	2-1-2012
734-051-0275	1-1-2012	Suspend	2-1-2012	734-051-2020	6-29-2012	Adopt	8-1-2012
734-051-0275	6-29-2012	Repeal	8-1-2012	734-051-2020(T)	6-29-2012	Repeal	8-1-2012
734-051-0285	1-1-2012	Suspend	2-1-2012	734-051-2030	1-1-2012	Adopt(T)	2-1-2012
734-051-0285	6-29-2012	Repeal	8-1-2012	734-051-2030	6-29-2012	Adopt	8-1-2012
734-051-0295	1-1-2012	Suspend	2-1-2012	734-051-2030(T)	6-29-2012	Repeal	8-1-2012
734-051-0295	6-29-2012	Repeal	8-1-2012	734-051-3010	1-1-2012	Adopt(T)	2-1-2012
734-051-0305	1-1-2012	Suspend	2-1-2012	734-051-3010	6-29-2012	Adopt	8-1-2012
734-051-0305	6-29-2012	Repeal	8-1-2012	734-051-3010(T)	6-29-2012	Repeal	8-1-2012
734-051-0315	1-1-2012	Suspend	2-1-2012	734-051-3020	1-1-2012	Adopt(T)	2-1-2012
734-051-0315	6-29-2012	Repeal	8-1-2012	734-051-3020	5-3-2012	Amend(T)	6-1-2012
734-051-0325	1-1-2012	Suspend	2-1-2012	734-051-3020	6-29-2012	Adopt	8-1-2012
734-051-0325	6-29-2012	Repeal	8-1-2012	734-051-3020(T)	5-3-2012	Suspend	6-1-2012
734-051-0335	1-1-2012	Suspend	2-1-2012	734-051-3020(T)	6-29-2012	Repeal	8-1-2012
734-051-0335	6-29-2012	Repeal	8-1-2012	734-051-3030	1-1-2012	Adopt(T)	2-1-2012
734-051-0345	1-1-2012	Suspend	2-1-2012	734-051-3030	6-29-2012	Adopt	8-1-2012
734-051-0345	6-29-2012	Repeal	8-1-2012	734-051-3030(T)	6-29-2012	Repeal	8-1-2012
734-051-0355	1-1-2012	Suspend	2-1-2012	734-051-3040	1-1-2012	Adopt(T)	2-1-2012
734-051-0355	6-29-2012	Repeal	8-1-2012	734-051-3040	6-29-2012	Adopt	8-1-2012
734-051-0500	1-1-2012	Suspend	2-1-2012	734-051-3040(T)	6-29-2012	Repeal	8-1-2012
734-051-0500	6-29-2012	Repeal	8-1-2012	734-051-3050	1-1-2012	Adopt(T)	2-1-2012

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734-051-3050	6-29-2012	Adopt	8-1-2012	734-051-5080	1-1-2012	Adopt(T)	2-1-2012
734-051-3050(T)	6-29-2012	Repeal	8-1-2012	734-051-5080	6-29-2012	Adopt	8-1-2012
734-051-3060	1-1-2012	Adopt(T)	2-1-2012	734-051-5080(T)	6-29-2012	Repeal	8-1-2012
734-051-3060	6-29-2012	Adopt	8-1-2012	734-051-5090	1-1-2012	Adopt(T)	2-1-2012
734-051-3060(T)	6-29-2012	Repeal	8-1-2012	734-051-5090	6-29-2012	Adopt	8-1-2012
734-051-3070	1-1-2012	Adopt(T)	2-1-2012	734-051-5090(T)	6-29-2012	Repeal	8-1-2012
734-051-3070	6-29-2012	Adopt	8-1-2012	734-051-5100	1-1-2012	Adopt(T)	2-1-2012
734-051-3070(T)	6-29-2012	Repeal	8-1-2012	734-051-5100	6-29-2012	Adopt	8-1-2012
734-051-3080	1-1-2012	Adopt(T)	2-1-2012	734-051-5100(T)	6-29-2012	Repeal	8-1-2012
734-051-3080	6-29-2012	Adopt	8-1-2012	734-051-5110	1-1-2012	Adopt(T)	2-1-2012
734-051-3080(T)	6-29-2012	Repeal	8-1-2012	734-051-5110	6-29-2012	Adopt	8-1-2012
734-051-3090	1-1-2012	Adopt(T)	2-1-2012	734-051-5110(T)	6-29-2012	Repeal	8-1-2012
734-051-3090	6-29-2012	Adopt	8-1-2012	734-051-5120	1-1-2012	Adopt(T)	2-1-2012
734-051-3090(T)	6-29-2012	Repeal	8-1-2012	734-051-5120	6-29-2012	Adopt	8-1-2012
734-051-3100	1-1-2012	Adopt(T)	2-1-2012	734-051-5120(T)	6-29-2012	Repeal	8-1-2012
734-051-3100	6-29-2012	Adopt	8-1-2012	734-051-6010	1-1-2012	Adopt(T)	2-1-2012
734-051-3100(T)	6-29-2012	Repeal	8-1-2012	734-051-6010	6-29-2012	Adopt	8-1-2012
734-051-3110	1-1-2012	Adopt(T)	2-1-2012	734-051-6010(T)	6-29-2012	Repeal	8-1-2012
734-051-3110	6-29-2012	Adopt	8-1-2012	734-051-6020	1-1-2012	Adopt(T)	2-1-2012
734-051-3110(T)	6-29-2012	Repeal	8-1-2012	734-051-6020	6-29-2012	Adopt	8-1-2012
734-051-4010	1-1-2012	Adopt(T)	2-1-2012	734-051-6020(T)	6-29-2012	Repeal	8-1-2012
734-051-4010	6-29-2012	Adopt	8-1-2012	734-051-6030	1-1-2012	Adopt(T)	2-1-2012
734-051-4010(T)	6-29-2012	Repeal	8-1-2012	734-051-6030	6-29-2012	Adopt	8-1-2012
734-051-4020	1-1-2012	Adopt(T)	2-1-2012	734-051-6030(T)	6-29-2012	Repeal	8-1-2012
734-051-4020	6-29-2012	Adopt	8-1-2012	734-051-6040	1-1-2012	Adopt(T)	2-1-2012
734-051-4020(T)	6-29-2012	Repeal	8-1-2012	734-051-6040	6-29-2012	Adopt	8-1-2012
734-051-4030	1-1-2012	Adopt(T)	2-1-2012	734-051-6040(T)	6-29-2012	Repeal	8-1-2012
734-051-4030	6-29-2012	Adopt	8-1-2012	734-051-6050	1-1-2012	Adopt(T)	2-1-2012
734-051-4030(T)	6-29-2012	Repeal	8-1-2012	734-051-6050	6-29-2012	Adopt	8-1-2012
734-051-4040	1-1-2012	Adopt(T)	2-1-2012	734-051-6050(T)	6-29-2012	Repeal	8-1-2012
734-051-4040	6-29-2012	Adopt	8-1-2012	734-051-6060	1-1-2012	Adopt(T)	2-1-2012
734-051-4040(T)	6-29-2012	Repeal	8-1-2012	734-051-6060	6-29-2012	Adopt	8-1-2012
734-051-4050	1-1-2012	Adopt(T)	2-1-2012	734-051-6060(T)	6-29-2012	Repeal	8-1-2012
734-051-4050	6-29-2012	Adopt	8-1-2012	734-051-6070	1-1-2012	Adopt(T)	2-1-2012
734-051-4050(T)	6-29-2012	Repeal	8-1-2012	734-051-6070	6-29-2012	Adopt	8-1-2012
734-051-5010	1-1-2012	Adopt(T)	2-1-2012	734-051-6070(T)	6-29-2012	Repeal	8-1-2012
734-051-5010	6-29-2012	Adopt	8-1-2012	734-051-7010	1-1-2012	Adopt(T)	2-1-2012
734-051-5010(T)	6-29-2012	Repeal	8-1-2012	734-051-7010	6-29-2012	Adopt	8-1-2012
734-051-5020	1-1-2012	Adopt(T)	2-1-2012	734-051-7010(T)	6-29-2012	Repeal	8-1-2012
734-051-5020	6-29-2012	Adopt	8-1-2012	734-060-0000	3-26-2012	Amend	5-1-2012
734-051-5020(T)	6-29-2012	Repeal	8-1-2012	734-060-0000(T)	3-26-2012	Repeal	5-1-2012
734-051-5030	1-1-2012	Adopt(T)	2-1-2012	734-060-0007	3-26-2012	Adopt	5-1-2012
734-051-5030	6-29-2012	Adopt	8-1-2012	734-060-0007(T)	3-26-2012	Repeal	5-1-2012
734-051-5030(T)	6-29-2012	Repeal	8-1-2012	734-060-0010	3-26-2012	Amend	5-1-2012
734-051-5040	1-1-2012	Adopt(T)	2-1-2012	734-065-0015	3-26-2012	Amend	5-1-2012
734-051-5040	6-29-2012	Adopt	8-1-2012	734-065-0020	3-26-2012	Amend	5-1-2012
734-051-5040(T)	6-29-2012	Repeal	8-1-2012	734-065-0025	3-26-2012	Amend	5-1-2012
734-051-5050	1-1-2012	Adopt(T)	2-1-2012	734-070-0010	1-27-2012	Amend	3-1-2012
734-051-5050	6-29-2012	Adopt	8-1-2012	734-075-0005	1-27-2012	Amend	3-1-2012
734-051-5050(T)	6-29-2012	Repeal	8-1-2012	734-075-0008	1-27-2012	Amend	3-1-2012
734-051-5060	1-1-2012	Adopt(T)	2-1-2012	734-075-0010	1-27-2012	Amend	3-1-2012
734-051-5060	6-29-2012	Adopt	8-1-2012	734-075-0011	1-27-2012	Amend	3-1-2012
734-051-5060(T)	6-29-2012	Repeal	8-1-2012	734-075-0015	1-27-2012	Amend	3-1-2012
734-051-5070	1-1-2012	Adopt(T)	2-1-2012	734-075-0020	1-27-2012	Amend	3-1-2012
734-051-5070	6-29-2012	Adopt	8-1-2012	734-075-0022	1-27-2012	Amend	3-1-2012
734-051-5070(T)	6-29-2012	Repeal	8-1-2012	734-075-0025	1-27-2012	Amend	3-1-2012

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734-075-0035	1-27-2012	Amend	3-1-2012	735-063-0067	1-30-2012	Adopt	3-1-2012
734-075-0036	1-27-2012	Amend	3-1-2012	735-064-0085	12-22-2011	Repeal	2-1-2012
734-075-0037	1-27-2012	Amend	3-1-2012	735-064-0220	1-1-2012	Amend	2-1-2012
734-075-0040	1-27-2012	Amend	3-1-2012	735-070-0004	11-23-2011	Amend	1-1-2012
734-075-0041	1-27-2012	Amend	3-1-2012	735-070-0010	1-1-2012	Amend	2-1-2012
734-075-0045	1-27-2012	Amend	3-1-2012	735-070-0054	11-23-2011	Amend	1-1-2012
734-075-0055	1-27-2012	Amend	3-1-2012	735-070-0085	3-26-2012	Amend(T)	5-1-2012
734-075-0085	1-27-2012	Amend	3-1-2012	735-072-0035	1-1-2012	Amend	2-1-2012
734-076-0065	1-27-2012	Amend	3-1-2012	735-074-0140	1-1-2012	Amend	2-1-2012
734-076-0075	1-27-2012	Amend	3-1-2012	735-076-0020	1-1-2012	Amend	2-1-2012
734-076-0105	1-27-2012	Amend	3-1-2012	735-152-0000	1-1-2012	Amend	2-1-2012
734-076-0115	1-27-2012	Amend	3-1-2012	735-152-0005	1-1-2012	Amend	2-1-2012
734-076-0135	1-27-2012	Amend	3-1-2012	735-152-0020	1-1-2012	Amend	2-1-2012
734-076-0145	1-27-2012	Amend	3-1-2012	735-152-0040	1-1-2012	Amend	2-1-2012
734-076-0155	1-27-2012	Amend	3-1-2012	735-152-0050	1-1-2012	Amend	2-1-2012
734-076-0165	1-27-2012	Amend	3-1-2012	735-152-0060	1-1-2012	Amend	2-1-2012
734-076-0175	1-27-2012	Amend	3-1-2012	736-004-0005	2-15-2012	Amend	3-1-2012
734-082-0021	1-27-2012	Amend	3-1-2012	736-004-0010	2-15-2012	Amend	3-1-2012
735-001-0030	12-22-2011	Repeal	2-1-2012	736-004-0015	2-15-2012	Amend	3-1-2012
735-001-0050	1-30-2012	Amend	3-1-2012	736-004-0020	2-15-2012	Amend	3-1-2012
735-010-0000	6-27-2012	Amend	8-1-2012	736-004-0025	2-15-2012	Amend	3-1-2012
735-010-0008	6-27-2012	Amend	8-1-2012	736-004-0030	2-15-2012	Amend	3-1-2012
735-010-0010	6-27-2012	Amend	8-1-2012	736-004-0045	2-15-2012	Amend	3-1-2012
735-010-0030	1-30-2012	Amend	3-1-2012	736-004-0060	2-15-2012	Amend	3-1-2012
735-010-0030	6-27-2012	Amend	8-1-2012	736-004-0062	2-15-2012	Amend	3-1-2012
735-010-0040	6-27-2012	Amend	8-1-2012	736-004-0085	2-15-2012	Amend	3-1-2012
735-016-0080	12-22-2011	Repeal	2-1-2012	736-004-0090	2-15-2012	Amend	3-1-2012
735-020-0010	2-21-2012	Amend	4-1-2012	736-004-0095	2-15-2012	Amend	3-1-2012
735-020-0012	2-21-2012	Amend	4-1-2012	736-004-0100	2-15-2012	Amend	3-1-2012
735-022-0120	5-18-2012	Repeal	7-1-2012	736-004-0105	2-15-2012	Amend	3-1-2012
735-022-0130	5-18-2012	Adopt	7-1-2012	736-004-0115	2-15-2012	Amend	3-1-2012
735-030-0330	1-1-2012	Amend	2-1-2012	736-004-0120	2-15-2012	Amend	3-1-2012
735-032-0010	4-1-2012	Amend	5-1-2012	736-004-0125	2-15-2012	Amend	3-1-2012
735-032-0055	5-18-2012	Adopt	7-1-2012	736-004-0130	2-15-2012	Adopt	3-1-2012
735-040-0030	1-1-2012	Amend	2-1-2012	736-006-0110	5-11-2012	Amend	6-1-2012
735-050-0090	12-22-2011	Repeal	2-1-2012	736-006-0115	5-11-2012	Amend	6-1-2012
735-062-0002	1-30-2012	Amend	3-1-2012	736-006-0125	5-11-2012	Amend	6-1-2012
735-062-0005	1-1-2012	Amend	2-1-2012	736-006-0145	5-11-2012	Amend	6-1-2012
735-062-0007	1-30-2012	Amend	3-1-2012	736-006-0150	5-11-2012	Amend	6-1-2012
735-062-0010	1-1-2012	Amend	2-1-2012	736-006-0150	5-11-2012	Amend	6-1-2012
735-062-0015	1-1-2012	Amend	2-1-2012	736-015-0006	6-26-2012	Amend(T)	8-1-2012
735-062-0016	11-23-2011	Amend	1-1-2012	736-015-0010	11-28-2011	Amend	1-1-2012
735-062-0032	1-1-2012	Amend	2-1-2012	736-015-0020	11-28-2011	Amend	1-1-2012
735-062-0033	1-1-2012	Amend	2-1-2012	736-015-0026	11-28-2011	Amend	1-1-2012
735-062-0080	1-30-2012	Amend	3-1-2012	736-015-0030	11-28-2011	Amend	1-1-2012
735-062-0085	1-30-2012	Amend	3-1-2012	736-017-0005	5-11-2012	Amend	6-1-2012
735-062-0090	1-30-2012	Amend	3-1-2012	736-017-0010	5-11-2012	Amend	6-1-2012
735-062-0110	1-30-2012	Amend	3-1-2012	736-017-0020	5-11-2012	Amend	6-1-2012
735-062-0120	1-1-2012	Amend	2-1-2012	736-017-0035	5-11-2012	Amend	6-1-2012
735-062-0125	1-1-2012	Amend	2-1-2012	736-045-0006	5-4-2012	Adopt	6-1-2012
735-062-0135	1-1-2012	Amend	2-1-2012	736-045-0011	5-4-2012	Adopt	6-1-2012
735-062-0200	1-30-2012	Amend	3-1-2012	736-045-0100	5-4-2012	Adopt	6-1-2012
735-063-0000	1-30-2012	Amend	3-1-2012	736-045-0200	5-4-2012	Adopt	6-1-2012
735-063-0050	1-30-2012	Amend	3-1-2012	736-045-0300	5-4-2012	Adopt	6-1-2012
735-063-0060	1-30-2012	Amend	3-1-2012	736-045-0305	5-4-2012	Adopt	6-1-2012
735-063-0065	1-30-2012	Amend	3-1-2012	736-045-0310	5-4-2012	Adopt	6-1-2012
				736-045-0320	5-4-2012	Adopt	6-1-2012

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736-045-0340	5-4-2012	Adopt	6-1-2012	800-015-0030	2-1-2012	Amend	3-1-2012
736-045-0400	5-4-2012	Adopt	6-1-2012	800-020-0015	2-1-2012	Amend	3-1-2012
736-045-0405	5-4-2012	Adopt	6-1-2012	800-020-0022	2-1-2012	Amend	3-1-2012
736-045-0410	5-4-2012	Adopt	6-1-2012	800-020-0025	2-1-2012	Amend	3-1-2012
736-045-0412	5-4-2012	Adopt	6-1-2012	800-025-0020	2-1-2012	Amend	3-1-2012
736-045-0414	5-4-2012	Adopt	6-1-2012	800-025-0027	2-1-2012	Amend	3-1-2012
736-045-0416	5-4-2012	Adopt	6-1-2012	801-001-0035	1-1-2012	Amend	2-1-2012
736-045-0418	5-4-2012	Adopt	6-1-2012	801-001-0045	1-1-2012	Adopt	2-1-2012
736-045-0420	5-4-2012	Adopt	6-1-2012	801-005-0010	1-1-2012	Amend	2-1-2012
736-045-0422	5-4-2012	Adopt	6-1-2012	801-005-0300	1-1-2012	Amend	2-1-2012
736-045-0424	5-4-2012	Adopt	6-1-2012	801-010-0010	1-1-2012	Amend	2-1-2012
736-045-0426	5-4-2012	Adopt	6-1-2012	801-010-0040	1-1-2012	Amend	2-1-2012
736-045-0428	5-4-2012	Adopt	6-1-2012	801-010-0050	1-1-2012	Amend	2-1-2012
736-045-0430	5-4-2012	Adopt	6-1-2012	801-010-0065	1-1-2012	Amend	2-1-2012
736-045-0432	5-4-2012	Adopt	6-1-2012	801-010-0073	1-1-2012	Amend	2-1-2012
736-045-0434	5-4-2012	Adopt	6-1-2012	801-010-0075	1-1-2012	Amend	2-1-2012
736-045-0436	5-4-2012	Adopt	6-1-2012	801-010-0079	1-1-2012	Amend	2-1-2012
736-045-0438	5-4-2012	Adopt	6-1-2012	801-010-0080	1-1-2012	Amend	2-1-2012
736-045-0440	5-4-2012	Adopt	6-1-2012	801-010-0085	1-1-2012	Amend	2-1-2012
736-045-0442	5-4-2012	Adopt	6-1-2012	801-010-0110	1-1-2012	Amend	2-1-2012
736-045-0444	5-4-2012	Adopt	6-1-2012	801-010-0115	1-1-2012	Amend	2-1-2012
736-045-0446	5-4-2012	Adopt	6-1-2012	801-010-0120	1-1-2012	Amend	2-1-2012
736-045-0448	5-4-2012	Adopt	6-1-2012	801-010-0125	1-1-2012	Amend	2-1-2012
736-045-0500	5-4-2012	Adopt	6-1-2012	801-010-0130	1-1-2012	Amend	2-1-2012
736-045-0505	5-4-2012	Adopt	6-1-2012	801-010-0190	1-1-2012	Am. & Ren.	2-1-2012
738-010-0025	2-28-2012	Amend(T)	4-1-2012	801-010-0340	1-1-2012	Amend	2-1-2012
738-040-0035	6-11-2012	Adopt(T)	7-1-2012	801-010-0345	1-1-2012	Amend	2-1-2012
740-055-0010	12-22-2011	Amend	2-1-2012	801-040-0010	1-1-2012	Amend	2-1-2012
740-055-0100	11-23-2011	Amend	1-1-2012	801-040-0020	1-1-2012	Amend	2-1-2012
740-100-0010	4-1-2012	Amend	4-1-2012	801-040-0090	1-1-2012	Amend	2-1-2012
740-100-0010	5-18-2012	Amend	7-1-2012	801-040-0100	1-1-2012	Amend	2-1-2012
740-100-0065	4-1-2012	Amend	4-1-2012	801-040-0160	1-1-2012	Amend	2-1-2012
740-100-0070	4-1-2012	Amend	4-1-2012	801-050-0010	1-1-2012	Amend	2-1-2012
740-100-0080	4-1-2012	Amend	4-1-2012	801-050-0020	1-1-2012	Amend	2-1-2012
740-100-0085	4-1-2012	Amend	4-1-2012	801-050-0040	1-1-2012	Amend	2-1-2012
740-100-0090	4-1-2012	Amend	4-1-2012	804-001-0005	5-23-2012	Amend	7-1-2012
740-100-0100	1-1-2012	Amend	2-1-2012	804-022-0005	6-1-2012	Amend	7-1-2012
740-100-0230	4-23-2012	Amend	6-1-2012	804-022-0010	6-1-2012	Amend	7-1-2012
740-110-0010	4-1-2012	Amend	4-1-2012	806-010-0045	1-4-2012	Amend	2-1-2012
740-200-0020	2-21-2012	Amend	4-1-2012	808-001-0005	5-30-2012	Amend	7-1-2012
740-200-0040	2-21-2012	Amend	4-1-2012	808-002-0020	1-1-2012	Amend	2-1-2012
740-300-0010	11-23-2011	Amend	1-1-2012	808-002-0390	1-1-2012	Adopt	2-1-2012
740-300-0060	3-26-2012	Amend	5-1-2012	808-002-0625	1-1-2012	Amend	2-1-2012
741-040-0010	1-27-2012	Adopt	3-1-2012	808-003-0015	1-1-2012	Amend	2-1-2012
741-040-0020	1-27-2012	Adopt	3-1-2012	808-003-0025	1-1-2012	Amend	2-1-2012
741-040-0030	1-27-2012	Adopt	3-1-2012	808-003-0030	1-1-2012	Amend	2-1-2012
741-040-0040	1-27-2012	Adopt	3-1-2012	808-003-0040	1-1-2012	Amend	2-1-2012
741-040-0050	1-27-2012	Adopt	3-1-2012	808-003-0065	1-1-2012	Amend	2-1-2012
741-040-0060	1-27-2012	Adopt	3-1-2012	808-003-0090	1-1-2012	Amend	2-1-2012
741-040-0070	1-27-2012	Adopt	3-1-2012	808-003-0126	1-1-2012	Adopt	2-1-2012
800-010-0015	2-1-2012	Amend	3-1-2012	808-003-0130	1-1-2012	Amend	2-1-2012
800-010-0040	2-1-2012	Amend	3-1-2012	808-003-0230	5-30-2012	Amend	7-1-2012
800-015-0005	2-1-2012	Amend	3-1-2012	808-003-0620	1-1-2012	Adopt	2-1-2012
800-015-0010	2-1-2012	Amend	3-1-2012	808-004-0320	1-1-2012	Amend	2-1-2012
800-015-0015	2-1-2012	Amend	3-1-2012	808-005-0020	1-1-2012	Amend	2-1-2012

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808-040-0020	4-1-2012	Amend	5-1-2012	812-004-1537	5-1-2012	Amend	6-1-2012
808-040-0025	4-1-2012	Amend	5-1-2012	812-004-1600	5-1-2012	Amend	6-1-2012
808-040-0050	4-1-2012	Amend(T)	5-1-2012	812-005-0100	5-1-2012	Amend	6-1-2012
808-040-0080	1-1-2012	Amend	2-1-2012	812-005-0110	5-1-2012	Amend	6-1-2012
808-040-0080	4-1-2012	Amend	5-1-2012	812-005-0140	3-2-2012	Amend	4-1-2012
809-001-0005	6-15-2012	Amend	7-1-2012	812-005-0140(T)	3-2-2012	Repeal	4-1-2012
809-003-0000	6-15-2012	Amend	7-1-2012	812-005-0210	5-1-2012	Amend	6-1-2012
809-015-0020	6-15-2012	Adopt	7-1-2012	812-005-0250	3-2-2012	Amend	4-1-2012
809-030-0005	6-15-2012	Amend	7-1-2012	812-005-0270	5-1-2012	Amend	6-1-2012
809-030-0015	6-15-2012	Amend	7-1-2012	812-005-0280	5-1-2012	Amend	6-1-2012
809-030-0020	6-15-2012	Amend	7-1-2012	812-005-0800	1-1-2012	Amend	1-1-2012
809-050-0000	6-15-2012	Amend	7-1-2012	812-005-0800	3-2-2012	Amend	4-1-2012
809-050-0010	6-15-2012	Amend	7-1-2012	812-005-0800	5-1-2012	Amend	6-1-2012
811-010-0110	5-31-2012	Amend	7-1-2012	812-007-0020	3-2-2012	Amend	4-1-2012
812-001-0120	5-1-2012	Amend	6-1-2012	812-007-0302	3-2-2012	Amend	4-1-2012
812-001-0140	5-1-2012	Amend	6-1-2012	812-007-0350	3-2-2012	Amend	4-1-2012
812-002-0060	5-1-2012	Amend	6-1-2012	812-008-0000	1-1-2012	Amend	1-1-2012
812-002-0100	5-1-2012	Amend	6-1-2012	812-008-0020	1-1-2012	Amend	1-1-2012
812-002-0160	5-1-2012	Amend	6-1-2012	812-008-0030	1-1-2012	Amend	1-1-2012
812-002-0250	5-1-2012	Amend	6-1-2012	812-009-0060	5-1-2012	Amend	6-1-2012
812-002-0260	1-1-2012	Amend	1-1-2012	812-009-0085	5-1-2012	Amend	6-1-2012
812-002-0360	5-1-2012	Amend	6-1-2012	812-009-0090	5-1-2012	Amend	6-1-2012
812-002-0443	3-2-2012	Amend	4-1-2012	812-009-0185	5-1-2012	Adopt	6-1-2012
812-002-0673	5-1-2012	Amend	6-1-2012	812-009-0300	5-1-2012	Amend	6-1-2012
812-002-0700	5-1-2012	Amend	6-1-2012	812-009-0350	5-1-2012	Adopt	6-1-2012
812-002-0800	5-1-2012	Amend	6-1-2012	812-021-0005	1-13-2012	Amend(T)	2-1-2012
812-004-0200	5-1-2012	Amend	6-1-2012	812-021-0005	5-1-2012	Amend	6-1-2012
812-004-0560	5-1-2012	Amend	6-1-2012	812-021-0005(T)	5-1-2012	Repeal	6-1-2012
812-004-1001	5-1-2012	Amend	6-1-2012	812-021-0015	11-18-2011	Amend(T)	1-1-2012
812-004-1110	5-1-2012	Amend	6-1-2012	812-021-0015	3-2-2012	Amend	4-1-2012
812-004-1120	5-1-2012	Amend	6-1-2012	812-021-0015(T)	3-2-2012	Repeal	4-1-2012
812-004-1140	5-1-2012	Amend	6-1-2012	812-021-0019	3-2-2012	Amend	4-1-2012
812-004-1160	5-1-2012	Amend	6-1-2012	812-021-0025	2-9-2012	Amend(T)	3-1-2012
812-004-1180	5-1-2012	Amend	6-1-2012	812-021-0025	3-2-2012	Amend	4-1-2012
812-004-1195	5-1-2012	Amend	6-1-2012	812-021-0025	5-1-2012	Amend	6-1-2012
812-004-1210	5-1-2012	Amend	6-1-2012	812-021-0025(T)	3-2-2012	Repeal	4-1-2012
812-004-1240	5-1-2012	Amend	6-1-2012	812-021-0030	2-9-2012	Amend(T)	3-1-2012
812-004-1250	5-1-2012	Amend	6-1-2012	812-021-0030	5-1-2012	Amend	6-1-2012
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812-004-1300	5-1-2012	Amend	6-1-2012	812-021-0031	2-9-2012	Amend(T)	3-1-2012
812-004-1320	5-1-2012	Amend	6-1-2012	812-021-0031	5-1-2012	Amend	6-1-2012
812-004-1340	5-1-2012	Amend	6-1-2012	812-021-0031(T)	5-1-2012	Repeal	6-1-2012
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812-004-1360	5-1-2012	Amend	6-1-2012	813-006-0025	4-2-2012	Amend(T)	5-1-2012
812-004-1400	5-1-2012	Amend	6-1-2012	813-020-0005	3-27-2012	Amend	5-1-2012
812-004-1420	5-1-2012	Amend	6-1-2012	813-020-0005(T)	3-27-2012	Repeal	5-1-2012
812-004-1440	5-1-2012	Amend	6-1-2012	813-020-0010	3-27-2012	Repeal	5-1-2012
812-004-1450	5-1-2012	Amend	6-1-2012	813-020-0015	3-27-2012	Repeal	5-1-2012
812-004-1460	5-1-2012	Amend	6-1-2012	813-020-0016	3-27-2012	Repeal	5-1-2012
812-004-1480	5-1-2012	Amend	6-1-2012	813-020-0017	3-27-2012	Renumber	5-1-2012
812-004-1490	5-1-2012	Amend	6-1-2012	813-020-0020	3-27-2012	Amend	5-1-2012
812-004-1500	5-1-2012	Amend	6-1-2012	813-020-0020(T)	3-27-2012	Repeal	5-1-2012
812-004-1505	5-1-2012	Amend	6-1-2012	813-020-0024	3-27-2012	Renumber	5-1-2012
812-004-1510	5-1-2012	Amend	6-1-2012	813-020-0025	3-27-2012	Amend	5-1-2012
812-004-1520	5-1-2012	Amend	6-1-2012	813-020-0025(T)	3-27-2012	Repeal	5-1-2012

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813-020-0032	3-27-2012	Renumber	5-1-2012	820-010-0305(T)	5-10-2012	Repeal	6-1-2012
813-020-0033	3-27-2012	Repeal	5-1-2012	820-010-0442	5-10-2012	Amend	6-1-2012
813-020-0035	3-27-2012	Amend	5-1-2012	820-010-0465	5-10-2012	Amend	6-1-2012
813-020-0035(T)	3-27-2012	Repeal	5-1-2012	820-010-0505	3-16-2012	Amend(T)	5-1-2012
813-020-0040	3-27-2012	Renumber	5-1-2012	820-010-0505	5-10-2012	Amend	6-1-2012
813-020-0041	3-27-2012	Renumber	5-1-2012	820-010-0505(T)	5-10-2012	Repeal	6-1-2012
813-020-0042	3-27-2012	Renumber	5-1-2012	820-010-0520	5-10-2012	Amend	6-1-2012
813-020-0045	3-27-2012	Amend	5-1-2012	820-010-0530	5-10-2012	Amend	6-1-2012
813-020-0045(T)	3-27-2012	Repeal	5-1-2012	820-010-0621	5-10-2012	Amend	6-1-2012
813-020-0050	3-27-2012	Renumber	5-1-2012	820-010-0622	5-10-2012	Amend	6-1-2012
813-020-0051	3-27-2012	Renumber	5-1-2012	820-010-0622	7-13-2012	Amend	8-1-2012
813-020-0060	3-27-2012	Amend	5-1-2012	820-010-0730	5-10-2012	Adopt	6-1-2012
813-020-0060(T)	3-27-2012	Repeal	5-1-2012	830-011-0000	4-1-2012	Amend	5-1-2012
813-020-0070	3-27-2012	Amend	5-1-2012	830-011-0020	4-1-2012	Amend	5-1-2012
813-020-0070(T)	3-27-2012	Repeal	5-1-2012	830-011-0070	4-1-2012	Amend	5-1-2012
813-044-0000	3-27-2012	Amend	5-1-2012	830-020-0030	4-1-2012	Amend	5-1-2012
813-044-0000(T)	3-27-2012	Repeal	5-1-2012	830-020-0040	4-1-2012	Amend	5-1-2012
813-044-0010	3-27-2012	Repeal	5-1-2012	830-020-0050	4-1-2012	Amend	5-1-2012
813-044-0020	3-27-2012	Repeal	5-1-2012	830-030-0000	4-1-2012	Amend	5-1-2012
813-044-0030	3-27-2012	Amend	5-1-2012	830-030-0008	4-1-2012	Amend	5-1-2012
813-044-0030(T)	3-27-2012	Repeal	5-1-2012	830-030-0010	4-1-2012	Amend	5-1-2012
813-044-0040	3-27-2012	Amend	5-1-2012	830-030-0030	4-1-2012	Amend	5-1-2012
813-044-0040(T)	3-27-2012	Repeal	5-1-2012	830-030-0040	4-1-2012	Amend	5-1-2012
813-044-0050	3-27-2012	Amend	5-1-2012	830-030-0050	4-1-2012	Amend	5-1-2012
813-044-0050(T)	3-27-2012	Repeal	5-1-2012	830-030-0090	4-1-2012	Amend	5-1-2012
813-044-0055	3-27-2012	Adopt	5-1-2012	830-030-0100	4-1-2012	Amend	5-1-2012
813-044-0055(T)	3-27-2012	Repeal	5-1-2012	830-040-0000	4-1-2012	Amend	5-1-2012
813-044-0060	3-27-2012	Repeal	5-1-2012	830-040-0010	4-1-2012	Amend	5-1-2012
813-140-0096	4-11-2012	Amend	5-1-2012	830-040-0020	4-1-2012	Amend	5-1-2012
817-090-0025	3-12-2012	Amend(T)	4-1-2012	830-040-0040	4-1-2012	Amend	5-1-2012
817-090-0035	3-12-2012	Amend(T)	4-1-2012	830-040-0050	4-1-2012	Amend	5-1-2012
817-090-0045	3-12-2012	Amend(T)	4-1-2012	833-020-0021	5-15-2012	Amend	6-1-2012
817-090-0045	3-12-2012	Amend(T)	4-1-2012	833-020-0075	5-15-2012	Adopt	6-1-2012
817-090-0105	3-12-2012	Amend(T)	4-1-2012	833-120-0011	12-15-2011	Amend	1-1-2012
817-120-0005	3-12-2012	Amend(T)	4-1-2012	833-120-0021	12-15-2011	Amend	1-1-2012
818-001-0087	1-27-2012	Amend	3-1-2012	833-120-0031	12-15-2011	Amend	1-1-2012
818-021-0085	7-1-2012	Amend	7-1-2012	833-120-0041	12-15-2011	Amend	1-1-2012
818-026-0030	7-1-2012	Amend	7-1-2012	834-040-0000	3-28-2012	Adopt	5-1-2012
818-026-0055	7-1-2012	Amend	7-1-2012	836-005-0107	3-27-2012	Amend	5-1-2012
818-035-0065	7-1-2012	Amend	7-1-2012	836-009-0007	7-1-2012	Amend(T)	7-1-2012
818-035-0066	7-1-2012	Adopt	7-1-2012	836-010-0000	1-1-2012	Amend	2-1-2012
818-042-0020	7-1-2012	Amend	7-1-2012	836-010-0011	1-1-2012	Amend	2-1-2012
818-042-0040	7-1-2012	Amend	7-1-2012	836-010-0012	1-1-2012	Repeal	2-1-2012
818-042-0100	7-1-2012	Amend	7-1-2012	836-011-0000	2-7-2012	Amend	3-1-2012
820-010-0204	5-10-2012	Amend	6-1-2012	836-011-0600	2-16-2012	Adopt	4-1-2012
820-010-0206	5-10-2012	Amend	6-1-2012	836-029-0000	7-1-2012	Adopt(T)	7-1-2012
820-010-0208	5-10-2012	Amend	6-1-2012	836-029-0005	7-1-2012	Adopt(T)	7-1-2012
820-010-0209	5-10-2012	Amend	6-1-2012	836-029-0010	7-1-2012	Adopt(T)	7-1-2012
820-010-0210	5-10-2012	Amend	6-1-2012	836-029-0015	7-1-2012	Adopt(T)	7-1-2012
820-010-0212	5-10-2012	Amend	6-1-2012	836-029-0020	7-1-2012	Adopt(T)	7-1-2012
820-010-0213	5-10-2012	Amend	6-1-2012	836-029-0025	7-1-2012	Adopt(T)	7-1-2012
820-010-0214	5-10-2012	Amend	6-1-2012	836-029-0030	7-1-2012	Adopt(T)	7-1-2012
820-010-0215	5-10-2012	Amend	6-1-2012	836-029-0035	7-1-2012	Adopt(T)	7-1-2012
820-010-0260	5-10-2012	Amend	6-1-2012	836-029-0040	7-1-2012	Adopt(T)	7-1-2012
820-010-0300	5-10-2012	Amend	6-1-2012	836-029-0045	7-1-2012	Adopt(T)	7-1-2012
820-010-0305	3-16-2012	Amend(T)	5-1-2012				

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836-029-0055	7-1-2012	Adopt(T)	7-1-2012	836-071-0355	8-1-2012	Amend(T)	8-1-2012
836-029-0060	7-1-2012	Adopt(T)	7-1-2012	836-071-0360	8-1-2012	Amend(T)	8-1-2012
836-029-0065	7-1-2012	Adopt(T)	7-1-2012	836-071-0500	1-1-2012	Amend	2-1-2012
836-029-0070	7-1-2012	Adopt(T)	7-1-2012	836-071-0501	1-1-2012	Adopt	2-1-2012
836-029-0075	7-1-2012	Adopt(T)	7-1-2012	836-071-0550	1-1-2012	Adopt	2-1-2012
836-029-0080	7-1-2012	Adopt(T)	7-1-2012	836-071-0560	1-1-2012	Adopt	2-1-2012
836-029-0085	7-1-2012	Adopt(T)	7-1-2012	836-071-0560	8-1-2012	Amend(T)	8-1-2012
836-029-0090	7-1-2012	Adopt(T)	7-1-2012	836-071-0565	1-1-2012	Adopt	2-1-2012
836-029-0095	7-1-2012	Adopt(T)	7-1-2012	836-071-0565	8-1-2012	Amend(T)	8-1-2012
836-029-0100	7-1-2012	Adopt(T)	7-1-2012	836-071-0570	1-1-2012	Adopt	2-1-2012
836-029-0105	7-1-2012	Adopt(T)	7-1-2012	836-072-0010	8-1-2012	Amend(T)	8-1-2012
836-029-0110	7-1-2012	Adopt(T)	7-1-2012	836-075-0000	8-1-2012	Amend(T)	8-1-2012
836-029-0115	7-1-2012	Adopt(T)	7-1-2012	836-075-0030	8-1-2012	Amend(T)	8-1-2012
836-029-0120	7-1-2012	Adopt(T)	7-1-2012	836-080-0337	6-7-2012	Amend	7-1-2012
836-052-0138	1-1-2013	Amend	4-1-2012	836-200-0250	1-1-2012	Adopt	1-1-2012
836-052-0143	1-1-2013	Adopt	4-1-2012	836-200-0255	1-1-2012	Adopt	1-1-2012
836-052-0508	2-14-2012	Amend	3-1-2012	836-200-0300	1-1-2012	Adopt	1-1-2012
836-052-0768	2-14-2012	Adopt	3-1-2012	836-200-0305	1-1-2012	Adopt	1-1-2012
836-052-0770	2-14-2012	Adopt	3-1-2012	836-200-0310	1-1-2012	Adopt	1-1-2012
836-052-0900	1-13-2012	Suspend	2-1-2012	836-200-0315	1-1-2012	Adopt	1-1-2012
836-052-0900	5-1-2012	Repeal	6-1-2012	837-012-0515	2-6-2012	Amend(T)	3-1-2012
836-052-1000	4-5-2012	Amend	5-1-2012	837-012-0515	8-3-2012	Amend	6-1-2012
836-053-0410	12-19-2011	Amend	2-1-2012	837-020-0080	1-24-2012	Amend	3-1-2012
836-053-0415	12-19-2011	Adopt	2-1-2012	837-020-0085	1-24-2012	Amend	3-1-2012
836-053-0825	12-19-2011	Adopt	2-1-2012	837-020-0115	1-24-2012	Amend	3-1-2012
836-053-0830	12-19-2011	Adopt	2-1-2012	837-035-0000	1-24-2012	Amend	3-1-2012
836-053-0851	12-19-2011	Amend	2-1-2012	837-035-0060	1-24-2012	Amend	3-1-2012
836-053-0856	12-19-2011	Repeal	2-1-2012	837-035-0080	1-24-2012	Amend	3-1-2012
836-053-0857	12-19-2011	Adopt	2-1-2012	837-035-0100	1-24-2012	Amend	3-1-2012
836-053-0861	12-19-2011	Repeal	2-1-2012	837-035-0160	1-24-2012	Amend	3-1-2012
836-053-0862	12-19-2011	Adopt	2-1-2012	837-035-0200	1-24-2012	Amend	3-1-2012
836-053-0862	4-15-2012	Suspend	5-1-2012	837-035-0220	1-24-2012	Amend	3-1-2012
836-053-0863	4-15-2012	Adopt(T)	5-1-2012	837-035-0240	1-24-2012	Amend	3-1-2012
836-053-0866	12-19-2011	Repeal	2-1-2012	837-039-0040	6-27-2012	Amend	8-1-2012
836-053-1000	12-19-2011	Amend	2-1-2012	837-040-0020	2-10-2012	Amend(T)	3-1-2012
836-053-1030	12-19-2011	Amend	2-1-2012	837-040-0020	3-1-2012	Amend	3-1-2012
836-053-1033	12-19-2011	Adopt	2-1-2012	837-040-0020	8-2-2012	Amend	7-1-2012
836-053-1035	12-19-2011	Adopt	2-1-2012	839-001-0300	1-1-2012	Adopt	2-1-2012
836-053-1060	12-19-2011	Amend	2-1-2012	839-001-0560	1-1-2012	Amend	2-1-2012
836-053-1070	12-19-2011	Amend	2-1-2012	839-002-0001	1-1-2012	Amend	2-1-2012
836-053-1080	12-19-2011	Amend	2-1-2012	839-002-0002	1-1-2012	Amend	2-1-2012
836-053-1100	12-19-2011	Amend	2-1-2012	839-002-0005	1-1-2012	Amend	2-1-2012
836-053-1110	12-19-2011	Amend	2-1-2012	839-002-0015	1-1-2012	Amend	2-1-2012
836-053-1140	12-19-2011	Amend	2-1-2012	839-002-0020	1-1-2012	Amend	2-1-2012
836-053-1310	12-19-2011	Amend	2-1-2012	839-002-0025	1-1-2012	Amend	2-1-2012
836-053-1340	12-19-2011	Amend	2-1-2012	839-002-0030	1-1-2012	Amend	2-1-2012
836-053-1342	12-19-2011	Amend	2-1-2012	839-002-0035	1-1-2012	Amend	2-1-2012
836-053-1350	12-19-2011	Amend	2-1-2012	839-002-0040	1-1-2012	Amend	2-1-2012
836-071-0110	8-1-2012	Amend(T)	8-1-2012	839-002-0045	1-1-2012	Amend	2-1-2012
836-071-0118	8-1-2012	Amend(T)	8-1-2012	839-002-0050	1-1-2012	Amend	2-1-2012
836-071-0130	8-1-2012	Amend(T)	8-1-2012	839-002-0055	1-1-2012	Amend	2-1-2012
836-071-0140	8-1-2012	Amend(T)	8-1-2012	839-002-0060	1-1-2012	Amend	2-1-2012
836-071-0220	8-1-2012	Amend(T)	8-1-2012	839-002-0065	1-1-2012	Amend	2-1-2012
836-071-0225	8-1-2012	Amend(T)	8-1-2012	839-002-0070	1-1-2012	Amend	2-1-2012
836-071-0235	8-1-2012	Amend(T)	8-1-2012	839-002-0075	1-1-2012	Amend	2-1-2012

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839-002-0080	1-1-2012	Amend	2-1-2012	839-011-0142	1-3-2012	Amend	2-1-2012
839-003-0005	6-13-2012	Amend(T)	7-1-2012	839-011-0143	1-3-2012	Amend	2-1-2012
839-003-0025	6-13-2012	Amend(T)	7-1-2012	839-011-0145	1-3-2012	Amend	2-1-2012
839-003-0031	6-13-2012	Adopt(T)	7-1-2012	839-011-0162	1-3-2012	Amend	2-1-2012
839-003-0200	6-13-2012	Amend(T)	7-1-2012	839-011-0175	1-3-2012	Amend	2-1-2012
839-005-0033	1-1-2012	Renumber	2-1-2012	839-011-0265	1-3-2012	Amend	2-1-2012
839-005-0033	2-8-2012	Am. & Ren.	3-1-2012	839-011-0270	1-3-2012	Amend	2-1-2012
839-005-0075	1-1-2012	Adopt	2-1-2012	839-011-0290	1-3-2012	Amend	2-1-2012
839-005-0075	2-8-2012	Adopt	3-1-2012	839-011-0310	1-3-2012	Amend	2-1-2012
839-005-0130	1-1-2012	Adopt	2-1-2012	839-011-0320	1-3-2012	Amend	2-1-2012
839-005-0130	2-8-2012	Adopt	3-1-2012	839-011-0334	1-3-2012	Amend	2-1-2012
839-005-0135	1-1-2012	Adopt	2-1-2012	839-025-0700	1-1-2012	Amend	2-1-2012
839-005-0135	2-8-2012	Adopt	3-1-2012	839-025-0700	3-29-2012	Amend	5-1-2012
839-005-0160	1-1-2012	Amend	2-1-2012	839-025-0700	7-2-2012	Amend	8-1-2012
839-005-0160	2-8-2012	Amend	3-1-2012	839-050-0040	1-1-2012	Amend	2-1-2012
839-005-0170	1-1-2012	Amend	2-1-2012	839-050-0310	1-1-2012	Amend	2-1-2012
839-005-0170	2-8-2012	Amend	3-1-2012	839-050-0340	1-1-2012	Amend	2-1-2012
839-006-0440	1-1-2012	Amend	2-1-2012	845-001-0007	6-1-2012	Amend	6-1-2012
839-006-0440	2-8-2012	Amend	3-1-2012	845-005-0413	4-5-2012	Amend(T)	5-1-2012
839-006-0450	1-1-2012	Amend	2-1-2012	845-005-0425	1-1-2012	Amend	1-1-2012
839-006-0450	2-8-2012	Amend	3-1-2012	845-006-0335	5-1-2012	Amend	5-1-2012
839-006-0455	1-1-2012	Amend	2-1-2012	845-006-0392	5-1-2012	Amend	5-1-2012
839-006-0455	2-8-2012	Amend	3-1-2012	845-006-0396	5-1-2012	Amend	5-1-2012
839-006-0470	1-1-2012	Amend	2-1-2012	845-009-0135	1-1-2012	Amend	1-1-2012
839-006-0470	2-8-2012	Amend	3-1-2012	845-015-0101	1-1-2012	Amend	1-1-2012
839-006-0480	1-1-2012	Amend	2-1-2012	845-015-0101	4-1-2012	Amend	5-1-2012
839-006-0480	2-8-2012	Amend	3-1-2012	845-015-0105	4-1-2012	Amend	5-1-2012
839-009-0325	1-1-2012	Amend	2-1-2012	845-015-0115	4-1-2012	Amend	5-1-2012
839-009-0325	2-8-2012	Amend	3-1-2012	845-015-0118	4-1-2012	Amend	5-1-2012
839-009-0330	1-1-2012	Amend	2-1-2012	845-015-0120	1-1-2012	Amend	1-1-2012
839-009-0330	2-8-2012	Amend	3-1-2012	845-015-0185	1-1-2012	Amend	1-1-2012
839-009-0340	1-1-2012	Amend	2-1-2012	845-015-0190	1-1-2012	Amend	1-1-2012
839-009-0340	2-8-2012	Amend	3-1-2012	845-015-0196	1-1-2012	Amend	1-1-2012
839-009-0345	1-1-2012	Amend	2-1-2012	845-015-0210	1-1-2012	Adopt	1-1-2012
839-009-0345	2-8-2012	Amend	3-1-2012	847-001-0000	2-7-2012	Amend(T)	3-1-2012
839-009-0355	1-1-2012	Amend	2-1-2012	847-001-0000	4-17-2012	Amend	6-1-2012
839-009-0355	2-8-2012	Amend	3-1-2012	847-001-0000(T)	4-17-2012	Repeal	6-1-2012
839-009-0360	1-1-2012	Amend	2-1-2012	847-001-0005	2-7-2012	Amend(T)	3-1-2012
839-009-0360	2-8-2012	Amend	3-1-2012	847-001-0005(T)	4-17-2012	Repeal	6-1-2012
839-009-0362	1-1-2012	Amend	2-1-2012	847-001-0007	2-10-2012	Adopt	3-1-2012
839-009-0362	2-8-2012	Amend	3-1-2012	847-001-0010	2-7-2012	Amend(T)	3-1-2012
839-009-0365	1-1-2012	Amend	2-1-2012	847-001-0010(T)	4-17-2012	Repeal	6-1-2012
839-009-0365	2-8-2012	Amend	3-1-2012	847-001-0015	2-7-2012	Amend(T)	3-1-2012
839-011-0020	1-3-2012	Amend	2-1-2012	847-001-0015	4-17-2012	Amend	6-1-2012
839-011-0050	1-3-2012	Amend	2-1-2012	847-001-0015(T)	4-17-2012	Repeal	6-1-2012
839-011-0051	1-3-2012	Amend	2-1-2012	847-001-0020	2-7-2012	Amend(T)	3-1-2012
839-011-0060	1-3-2012	Amend	2-1-2012	847-001-0020	4-17-2012	Amend	6-1-2012
839-011-0070	1-3-2012	Amend	2-1-2012	847-001-0020(T)	4-17-2012	Repeal	6-1-2012
839-011-0072	1-3-2012	Amend	2-1-2012	847-001-0022	2-7-2012	Amend(T)	3-1-2012
839-011-0074	1-3-2012	Amend	2-1-2012	847-001-0022(T)	4-17-2012	Repeal	6-1-2012
839-011-0082	1-3-2012	Amend	2-1-2012	847-001-0025	2-7-2012	Amend(T)	3-1-2012
839-011-0084	1-3-2012	Amend	2-1-2012	847-001-0025(T)	4-17-2012	Repeal	6-1-2012
839-011-0088	1-3-2012	Amend	2-1-2012	847-001-0030	2-7-2012	Amend(T)	3-1-2012
839-011-0090	1-3-2012	Amend	2-1-2012	847-001-0030	4-17-2012	Amend	6-1-2012
839-011-0140	1-3-2012	Amend	2-1-2012	847-001-0030(T)	4-17-2012	Repeal	6-1-2012
839-011-0141	1-3-2012	Amend	2-1-2012	847-005-0005	1-1-2012	Amend(T)	2-1-2012

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847-005-0005	2-10-2012	Amend	3-1-2012	847-050-0041(T)	2-10-2012	Repeal	3-1-2012
847-005-0005	3-2-2012	Amend(T)	4-1-2012	847-050-0042	1-1-2012	Amend(T)	1-1-2012
847-005-0005(T)	2-10-2012	Repeal	3-1-2012	847-050-0042	2-10-2012	Amend	3-1-2012
847-008-0010	4-17-2012	Amend	6-1-2012	847-050-0042(T)	2-10-2012	Repeal	3-1-2012
847-008-0040	1-1-2012	Amend(T)	1-1-2012	847-050-0043	1-1-2012	Amend(T)	1-1-2012
847-008-0040	2-10-2012	Amend	3-1-2012	847-050-0043	2-10-2012	Amend	3-1-2012
847-008-0040(T)	2-10-2012	Repeal	3-1-2012	847-050-0043(T)	2-10-2012	Repeal	3-1-2012
847-020-0155	2-10-2012	Amend	3-1-2012	847-050-0046	1-1-2012	Amend(T)	1-1-2012
847-020-0155	3-2-2012	Amend(T)	4-1-2012	847-050-0046	2-10-2012	Amend	3-1-2012
847-020-0155(T)	2-10-2012	Repeal	3-1-2012	847-050-0046(T)	2-10-2012	Repeal	3-1-2012
847-035-0011	4-17-2012	Amend	6-1-2012	847-050-0050	1-1-2012	Amend(T)	1-1-2012
847-035-0020	2-10-2012	Amend	3-1-2012	847-050-0050	2-10-2012	Amend	3-1-2012
847-035-0030	4-17-2012	Amend	6-1-2012	847-050-0050(T)	2-10-2012	Repeal	3-1-2012
847-050-0005	1-1-2012	Amend(T)	1-1-2012	847-050-0055	1-1-2012	Amend(T)	1-1-2012
847-050-0005	2-10-2012	Amend	3-1-2012	847-050-0055	2-10-2012	Amend	3-1-2012
847-050-0005(T)	2-10-2012	Repeal	3-1-2012	847-050-0055(T)	2-10-2012	Repeal	3-1-2012
847-050-0010	1-1-2012	Amend(T)	1-1-2012	847-050-0060	1-1-2012	Amend(T)	1-1-2012
847-050-0010	2-10-2012	Amend	3-1-2012	847-050-0060	2-10-2012	Amend	3-1-2012
847-050-0010(T)	2-10-2012	Repeal	3-1-2012	847-050-0060(T)	2-10-2012	Repeal	3-1-2012
847-050-0015	1-1-2012	Amend(T)	1-1-2012	847-050-0063	1-1-2012	Amend(T)	1-1-2012
847-050-0015	2-10-2012	Amend	3-1-2012	847-050-0063	2-10-2012	Amend	3-1-2012
847-050-0015(T)	2-10-2012	Repeal	3-1-2012	847-050-0063(T)	2-10-2012	Repeal	3-1-2012
847-050-0020	1-1-2012	Amend(T)	1-1-2012	847-050-0065	1-1-2012	Amend(T)	1-1-2012
847-050-0020	2-10-2012	Amend	3-1-2012	847-050-0065	2-10-2012	Amend	3-1-2012
847-050-0020(T)	2-10-2012	Repeal	3-1-2012	847-050-0065	6-1-2012	Amend(T)	6-1-2012
847-050-0023	1-1-2012	Amend(T)	1-1-2012	847-050-0065(T)	2-10-2012	Repeal	3-1-2012
847-050-0023	2-10-2012	Amend	3-1-2012	847-070-0045	2-10-2012	Amend	3-1-2012
847-050-0023(T)	2-10-2012	Repeal	3-1-2012	848-010-0015	3-1-2012	Amend	3-1-2012
847-050-0025	1-1-2012	Amend(T)	1-1-2012	848-010-0020	3-1-2012	Amend	3-1-2012
847-050-0025	2-10-2012	Amend	3-1-2012	848-010-0026	3-1-2012	Amend	3-1-2012
847-050-0025(T)	2-10-2012	Repeal	3-1-2012	848-010-0035	3-1-2012	Amend	3-1-2012
847-050-0026	1-1-2012	Amend(T)	1-1-2012	848-035-0030	3-1-2012	Amend	3-1-2012
847-050-0026	2-10-2012	Amend	3-1-2012	848-035-0040	3-1-2012	Amend	3-1-2012
847-050-0026(T)	2-10-2012	Repeal	3-1-2012	848-040-0125	3-1-2012	Amend	3-1-2012
847-050-0027	1-1-2012	Amend(T)	1-1-2012	848-045-0010	3-1-2012	Amend	3-1-2012
847-050-0027	2-10-2012	Amend	3-1-2012	850-030-0010	4-12-2012	Amend(T)	5-1-2012
847-050-0027	3-2-2012	Amend(T)	4-1-2012	850-030-0010	6-15-2012	Amend	7-1-2012
847-050-0027(T)	2-10-2012	Repeal	3-1-2012	850-030-0010(T)	6-15-2012	Repeal	7-1-2012
847-050-0029	1-1-2012	Amend(T)	1-1-2012	850-030-0030	4-12-2012	Amend(T)	5-1-2012
847-050-0029	2-10-2012	Amend	3-1-2012	850-030-0030	6-15-2012	Amend	7-1-2012
847-050-0029(T)	2-10-2012	Repeal	3-1-2012	850-030-0030(T)	6-15-2012	Repeal	7-1-2012
847-050-0035	1-1-2012	Amend(T)	1-1-2012	850-030-0031	4-12-2012	Adopt(T)	5-1-2012
847-050-0035	2-10-2012	Amend	3-1-2012	850-030-0031	6-15-2012	Adopt	7-1-2012
847-050-0035(T)	2-10-2012	Repeal	3-1-2012	850-030-0031(T)	6-15-2012	Repeal	7-1-2012
847-050-0037	1-1-2012	Amend(T)	1-1-2012	850-030-0070	4-12-2012	Amend(T)	5-1-2012
847-050-0037	2-10-2012	Amend	3-1-2012	850-030-0070	6-15-2012	Amend	7-1-2012
847-050-0037(T)	2-10-2012	Repeal	3-1-2012	850-030-0070(T)	6-15-2012	Repeal	7-1-2012
847-050-0038	1-1-2012	Amend(T)	1-1-2012	850-050-0120	12-23-2011	Amend	1-1-2012
847-050-0038	2-10-2012	Amend	3-1-2012	850-050-0120	6-15-2012	Amend	7-1-2012
847-050-0038(T)	2-10-2012	Repeal	3-1-2012	850-060-0215	12-23-2011	Amend	1-1-2012
847-050-0040	1-1-2012	Amend(T)	1-1-2012	850-060-0226	6-15-2012	Amend	7-1-2012
847-050-0040	2-10-2012	Amend	3-1-2012	851-002-0000	11-22-2011	Amend	1-1-2012
847-050-0040(T)	2-10-2012	Repeal	3-1-2012	851-002-0010	8-1-2012	Amend	8-1-2012
847-050-0041	1-1-2012	Amend(T)	1-1-2012	851-002-0020	8-1-2012	Amend	8-1-2012
847-050-0041	2-10-2012	Amend	3-1-2012	851-002-0030	8-1-2012	Amend	8-1-2012
847-050-0041	6-1-2012	Amend(T)	6-1-2012	851-002-0035	8-1-2012	Amend	8-1-2012

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851-045-0070	6-1-2012	Amend	6-1-2012	855-019-0280	1-1-2012	Amend	2-1-2012
851-045-0100	4-26-2012	Amend(T)	6-1-2012	855-019-0290	1-1-2012	Amend	2-1-2012
851-045-0100	6-1-2012	Amend	6-1-2012	855-031-0010	1-1-2012	Amend	2-1-2012
851-045-0100	6-5-2012	Amend	7-1-2012	855-031-0020	1-1-2012	Amend	2-1-2012
851-045-0100	8-1-2012	Amend	8-1-2012	855-031-0026	1-1-2012	Adopt	2-1-2012
851-050-0004	6-1-2012	Amend	6-1-2012	855-031-0045	1-1-2012	Amend	2-1-2012
851-050-0009	6-1-2012	Adopt	6-1-2012	855-041-0016	6-12-2012	Adopt	7-1-2012
851-050-0150	4-26-2012	Suspend	6-1-2012	855-041-0095	1-1-2012	Amend	2-1-2012
851-050-0150	8-1-2012	Repeal	8-1-2012	855-041-0095	5-1-2012	Amend	6-1-2012
851-052-0040	6-1-2012	Amend	6-1-2012	855-041-0105	5-1-2012	Am. & Ren.	6-1-2012
851-054-0060	6-1-2012	Adopt	6-1-2012	855-041-0110	5-1-2012	Repeal	6-1-2012
851-062-0090	4-1-2012	Amend	4-1-2012	855-041-0115	5-1-2012	Am. & Ren.	6-1-2012
851-062-0110	4-1-2012	Amend	4-1-2012	855-041-5100	5-1-2012	Adopt	6-1-2012
851-070-0090	4-26-2012	Amend(T)	6-1-2012	855-041-5120	5-1-2012	Adopt	6-1-2012
851-070-0090	8-1-2012	Amend	8-1-2012	855-041-5130	5-1-2012	Adopt	6-1-2012
853-001-0000	1-1-2012	Repeal	1-1-2012	855-041-5140	5-1-2012	Adopt	6-1-2012
853-001-0005	1-1-2012	Repeal	1-1-2012	855-041-5150	5-1-2012	Adopt	6-1-2012
853-001-0020	1-1-2012	Repeal	1-1-2012	855-041-5160	5-1-2012	Adopt	6-1-2012
853-001-0025	1-1-2012	Repeal	1-1-2012	855-041-5170	5-1-2012	Adopt	6-1-2012
853-001-0030	1-1-2012	Repeal	1-1-2012	855-043-0002	6-19-2012	Amend	8-1-2012
853-010-0010	1-1-2012	Repeal	1-1-2012	855-043-0405	6-19-2012	Adopt	8-1-2012
853-010-0015	1-1-2012	Repeal	1-1-2012	855-043-0410	6-19-2012	Adopt	8-1-2012
853-010-0017	1-1-2012	Repeal	1-1-2012	855-043-0415	6-19-2012	Adopt	8-1-2012
853-010-0020	1-1-2012	Repeal	1-1-2012	855-043-0420	6-19-2012	Adopt	8-1-2012
853-010-0025	1-1-2012	Repeal	1-1-2012	855-043-0425	6-19-2012	Adopt	8-1-2012
853-010-0035	1-1-2012	Repeal	1-1-2012	855-043-0430	6-19-2012	Adopt	8-1-2012
853-010-0040	1-1-2012	Repeal	1-1-2012	855-043-0435	6-19-2012	Adopt	8-1-2012
853-010-0045	1-1-2012	Repeal	1-1-2012	855-043-0440	6-19-2012	Adopt	8-1-2012
853-010-0050	1-1-2012	Repeal	1-1-2012	855-043-0445	6-19-2012	Adopt	8-1-2012
853-010-0055	1-1-2012	Repeal	1-1-2012	855-043-0450	6-19-2012	Adopt	8-1-2012
853-010-0060	1-1-2012	Repeal	1-1-2012	855-043-0455	6-19-2012	Adopt	8-1-2012
853-010-0065	1-1-2012	Repeal	1-1-2012	855-060-0004	1-1-2012	Adopt	2-1-2012
853-010-0070	1-1-2012	Repeal	1-1-2012	855-065-0005	6-19-2012	Amend(T)	8-1-2012
853-010-0074	1-1-2012	Repeal	1-1-2012	855-080-0100	12-15-2011	Amend(T)	1-1-2012
853-010-0075	1-1-2012	Repeal	1-1-2012	855-080-0100	6-19-2012	Amend	8-1-2012
853-010-0076	1-1-2012	Repeal	1-1-2012	855-080-0100(T)	12-15-2011	Suspend	1-1-2012
853-010-0077	1-1-2012	Repeal	1-1-2012	855-080-0103(T)	12-15-2011	Suspend	1-1-2012
853-010-0078	1-1-2012	Repeal	1-1-2012	855-110-0005	12-15-2011	Amend	1-1-2012
853-010-0079	1-1-2012	Repeal	1-1-2012	855-110-0007	12-15-2011	Amend	1-1-2012
853-010-0080	1-1-2012	Repeal	1-1-2012	855-110-0007	6-19-2012	Amend(T)	8-1-2012
853-020-0000	1-1-2012	Adopt	1-1-2012	855-110-0010	12-15-2011	Amend	1-1-2012
853-030-0000	1-1-2012	Adopt	1-1-2012	856-010-0015	12-30-2011	Amend	2-1-2012
853-030-0010	1-1-2012	Adopt	1-1-2012	856-010-0027	12-30-2011	Adopt	2-1-2012
853-030-0020	1-1-2012	Adopt	1-1-2012	856-030-0000	5-29-2012	Amend	7-1-2012
853-030-0030	1-1-2012	Adopt	1-1-2012	858-010-0001	6-8-2012	Amend	7-1-2012
853-030-0040	1-1-2012	Adopt	1-1-2012	858-010-0010	2-15-2012	Amend(T)	3-1-2012
853-030-0050	1-1-2012	Adopt	1-1-2012	858-010-0010	6-8-2012	Amend	7-1-2012
853-030-0060	1-1-2012	Adopt	1-1-2012	858-010-0010(T)	6-8-2012	Repeal	7-1-2012
853-030-0070	1-1-2012	Adopt	1-1-2012	858-010-0011	2-15-2012	Amend(T)	3-1-2012
853-040-0000	1-1-2012	Adopt	1-1-2012	858-010-0011	6-8-2012	Amend	7-1-2012
853-050-0000	1-1-2012	Adopt	1-1-2012	858-010-0011(T)	6-8-2012	Repeal	7-1-2012
853-050-0010	1-1-2012	Adopt	1-1-2012	858-010-0012	2-15-2012	Amend(T)	3-1-2012
853-060-0000	1-1-2012	Adopt	1-1-2012	858-010-0012	6-8-2012	Amend	7-1-2012
853-060-0010	1-1-2012	Adopt	1-1-2012	858-010-0012(T)	6-8-2012	Repeal	7-1-2012
855-006-0005	6-19-2012	Amend	8-1-2012	858-010-0013	2-15-2012	Amend(T)	3-1-2012

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858-010-0013	6-8-2012	Amend	7-1-2012	860-036-0407	1-1-2012	Repeal	2-1-2012
858-010-0013(T)	6-8-2012	Repeal	7-1-2012	860-036-0425	1-1-2012	Adopt	2-1-2012
858-010-0015	6-8-2012	Amend	7-1-2012	860-036-0505	1-1-2012	Amend	2-1-2012
858-010-0016	2-15-2012	Amend(T)	3-1-2012	860-036-0605	1-1-2012	Amend	2-1-2012
858-010-0016	6-8-2012	Amend	7-1-2012	860-036-0610	1-1-2012	Amend	2-1-2012
858-010-0016(T)	6-8-2012	Repeal	7-1-2012	860-036-0615	1-1-2012	Amend	2-1-2012
858-010-0017	2-15-2012	Amend(T)	3-1-2012	860-036-0625	1-1-2012	Am. & Ren.	2-1-2012
858-010-0017	6-8-2012	Amend	7-1-2012	860-036-0640	1-1-2012	Amend	2-1-2012
858-010-0017(T)	6-8-2012	Repeal	7-1-2012	860-036-0705	1-1-2012	Amend	2-1-2012
858-010-0020	6-8-2012	Amend	7-1-2012	860-036-0708	1-1-2012	Adopt	2-1-2012
858-010-0025	6-8-2012	Amend	7-1-2012	860-036-0710	1-1-2012	Amend	2-1-2012
858-010-0030	6-8-2012	Amend	7-1-2012	860-036-0715	1-1-2012	Amend	2-1-2012
858-010-0036	6-8-2012	Amend	7-1-2012	860-036-0737	1-1-2012	Amend	2-1-2012
858-010-0037	6-8-2012	Amend	7-1-2012	860-036-0739	1-1-2012	Amend	2-1-2012
858-010-0038	6-8-2012	Amend	7-1-2012	860-036-0740	1-1-2012	Amend	2-1-2012
858-010-0039	6-8-2012	Amend	7-1-2012	860-036-0745	1-1-2012	Amend	2-1-2012
858-020-0065	6-8-2012	Repeal	7-1-2012	860-036-0750	1-1-2012	Amend	2-1-2012
858-020-0095	6-8-2012	Repeal	7-1-2012	860-036-0756	1-1-2012	Amend	2-1-2012
859-030-0005	2-3-2012	Amend(T)	3-1-2012	860-036-0757	1-1-2012	Amend	2-1-2012
859-030-0005	4-16-2012	Amend	6-1-2012	860-036-0815	1-1-2012	Amend	2-1-2012
859-030-0005(T)	4-16-2012	Repeal	6-1-2012	860-036-0816	1-1-2012	Adopt	2-1-2012
859-030-0010	2-3-2012	Amend(T)	3-1-2012	860-038-0480	3-15-2012	Amend	4-1-2012
859-030-0010	4-16-2012	Amend	6-1-2012	860-038-0480(T)	3-15-2012	Repeal	4-1-2012
859-030-0010(T)	4-16-2012	Repeal	6-1-2012	860-039-0005	2-22-2012	Amend	4-1-2012
859-070-0040	2-3-2012	Adopt(T)	3-1-2012	875-005-0005	12-12-2011	Amend(T)	1-1-2012
859-070-0040	4-16-2012	Adopt	6-1-2012	875-005-0005	6-25-2012	Amend	8-1-2012
859-070-0040(T)	4-16-2012	Repeal	6-1-2012	875-040-0000	6-25-2012	Amend	8-1-2012
859-200-0001	12-22-2011	Adopt(T)	2-1-2012	875-040-0005	12-12-2011	Adopt(T)	1-1-2012
859-300-0050	12-13-2011	Amend	1-1-2012	875-040-0010	6-25-2012	Adopt	8-1-2012
859-300-0050(T)	12-13-2011	Repeal	1-1-2012	877-001-0020	12-29-2011	Amend	2-1-2012
860-001-0080	4-17-2012	Amend	6-1-2012	877-010-0015	12-29-2011	Amend	2-1-2012
860-001-0500	4-17-2012	Amend	6-1-2012	877-010-0020	12-29-2011	Amend	2-1-2012
860-022-0019	4-17-2012	Amend	6-1-2012	877-015-0105	12-29-2011	Amend	2-1-2012
860-022-0041	4-17-2012	Repeal	6-1-2012	877-015-0108	12-29-2011	Amend	2-1-2012
860-023-0080	1-1-2012	Repeal	1-1-2012	877-015-0136	12-29-2011	Amend	2-1-2012
860-023-0090	1-1-2012	Repeal	1-1-2012	877-020-0005	12-29-2011	Amend	2-1-2012
860-023-0100	1-1-2012	Repeal	1-1-2012	877-020-0008	12-29-2011	Amend	2-1-2012
860-023-0110	1-1-2012	Repeal	1-1-2012	877-020-0010	12-29-2011	Amend	2-1-2012
860-023-0120	1-1-2012	Repeal	1-1-2012	877-020-0016	12-29-2011	Amend	2-1-2012
860-023-0130	1-1-2012	Repeal	1-1-2012	877-020-0036	12-29-2011	Amend	2-1-2012
860-023-0140	1-1-2012	Repeal	1-1-2012	877-025-0006	12-29-2011	Amend	2-1-2012
860-023-0150	1-1-2012	Repeal	1-1-2012	877-025-0011	12-29-2011	Amend	2-1-2012
860-023-0160	1-1-2012	Repeal	1-1-2012	877-040-0050	12-29-2011	Amend	2-1-2012
860-024-0010	3-9-2012	Amend	4-1-2012	918-098-1000	1-1-2012	Amend	2-1-2012
860-027-0200	4-17-2012	Amend	6-1-2012	918-098-1510	3-1-2012	Amend(T)	4-1-2012
860-036-0001	1-1-2012	Amend	2-1-2012	918-098-1510	7-1-2012	Amend	8-1-2012
860-036-0010	1-1-2012	Amend	2-1-2012	918-098-1530	3-1-2012	Amend(T)	4-1-2012
860-036-0015	1-1-2012	Amend	2-1-2012	918-098-1530	7-1-2012	Amend	8-1-2012
860-036-0030	1-1-2012	Amend	2-1-2012	918-098-1590	3-1-2012	Adopt(T)	4-1-2012
860-036-0040	1-1-2012	Amend	2-1-2012	918-098-1590	7-1-2012	Adopt	8-1-2012
860-036-0050	1-1-2012	Amend	2-1-2012	918-098-1591	7-1-2012	Adopt	8-1-2012
860-036-0060	1-1-2012	Amend	2-1-2012	918-098-1620	1-1-2012	Amend	2-1-2012
860-036-0065	1-1-2012	Amend	2-1-2012	918-225-0240	1-1-2012	Amend	2-1-2012
860-036-0097	1-1-2012	Amend	2-1-2012	918-225-0430	1-1-2012	Amend	2-1-2012
860-036-0130	1-1-2012	Amend	2-1-2012	918-225-0435	1-1-2012	Amend	2-1-2012
860-036-0405	1-1-2012	Amend	2-1-2012	918-225-0570	1-1-2012	Amend	2-1-2012

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918-225-0600	1-1-2012	Amend	2-1-2012	943-045-0320	12-5-2011	Adopt	1-1-2012
918-225-0606	1-1-2012	Adopt	2-1-2012	943-045-0320	6-28-2012	Adopt	8-1-2012
918-225-0609	1-1-2012	Adopt	2-1-2012	943-045-0320(T)	12-5-2011	Repeal	1-1-2012
918-225-0612	1-1-2012	Adopt	2-1-2012	943-045-0320(T)	6-28-2012	Repeal	8-1-2012
918-225-0615	1-1-2012	Adopt	2-1-2012	943-045-0330	12-5-2011	Adopt	1-1-2012
918-225-0618	1-1-2012	Adopt	2-1-2012	943-045-0330	6-28-2012	Adopt	8-1-2012
918-225-0620	1-1-2012	Amend	2-1-2012	943-045-0330(T)	12-5-2011	Repeal	1-1-2012
918-305-0105	6-7-2012	Amend(T)	7-1-2012	943-045-0330(T)	6-28-2012	Repeal	8-1-2012
918-311-0065	5-1-2012	Amend(T)	6-1-2012	943-045-0340	12-5-2011	Adopt	1-1-2012
918-400-0455	1-1-2012	Amend	2-1-2012	943-045-0340	6-28-2012	Adopt	8-1-2012
918-400-0458	1-1-2012	Amend	2-1-2012	943-045-0340(T)	12-5-2011	Repeal	1-1-2012
918-440-0012	1-1-2012	Amend	2-1-2012	943-045-0340(T)	6-28-2012	Repeal	8-1-2012
918-460-0015	1-1-2012	Amend	2-1-2012	943-045-0350	12-5-2011	Adopt	1-1-2012
918-460-0015	2-1-2012	Amend	3-1-2012	943-045-0350	6-28-2012	Adopt	8-1-2012
918-460-0510	1-1-2012	Amend	2-1-2012	943-045-0350(T)	12-5-2011	Repeal	1-1-2012
918-525-0042	4-9-2012	Amend(T)	5-1-2012	943-045-0350(T)	6-28-2012	Repeal	8-1-2012
918-525-0042	7-1-2012	Amend	8-1-2012	943-045-0360	12-5-2011	Adopt	1-1-2012
943-007-0001	5-7-2012	Adopt(T)	6-1-2012	943-045-0360	6-28-2012	Adopt	8-1-2012
943-007-0335	5-7-2012	Adopt(T)	6-1-2012	943-045-0360(T)	12-5-2011	Repeal	1-1-2012
943-007-0501	5-7-2012	Adopt(T)	6-1-2012	943-045-0360(T)	6-28-2012	Repeal	8-1-2012
943-014-0300	12-1-2011	Adopt	1-1-2012	943-045-0370	12-5-2011	Adopt	1-1-2012
943-014-0300(T)	12-1-2011	Repeal	1-1-2012	943-045-0370	6-28-2012	Adopt	8-1-2012
943-014-0305	12-1-2011	Adopt	1-1-2012	943-045-0370(T)	12-5-2011	Repeal	1-1-2012
943-014-0305(T)	12-1-2011	Repeal	1-1-2012	943-045-0370(T)	6-28-2012	Repeal	8-1-2012
943-014-0310	12-1-2011	Adopt	1-1-2012	943-045-0400	12-23-2011	Adopt	2-1-2012
943-014-0310(T)	12-1-2011	Repeal	1-1-2012	943-045-0400(T)	12-23-2011	Repeal	2-1-2012
943-014-0315	12-1-2011	Adopt	1-1-2012	943-045-0410	12-23-2011	Adopt	2-1-2012
943-014-0315(T)	12-1-2011	Repeal	1-1-2012	943-045-0410(T)	12-23-2011	Repeal	2-1-2012
943-014-0320	12-1-2011	Adopt	1-1-2012	943-045-0420	12-23-2011	Adopt	2-1-2012
943-014-0320(T)	12-1-2011	Repeal	1-1-2012	943-045-0420(T)	12-23-2011	Repeal	2-1-2012
943-045-0000	12-4-2011	Adopt	1-1-2012	943-045-0430	12-23-2011	Adopt	2-1-2012
943-045-0000(T)	12-4-2011	Repeal	1-1-2012	943-045-0430(T)	12-23-2011	Repeal	2-1-2012
943-045-0250	12-5-2011	Adopt	1-1-2012	943-045-0440	12-23-2011	Adopt	2-1-2012
943-045-0250	6-28-2012	Adopt	8-1-2012	943-045-0440(T)	12-23-2011	Repeal	2-1-2012
943-045-0250(T)	12-5-2011	Repeal	1-1-2012	943-045-0450	12-23-2011	Adopt	2-1-2012
943-045-0250(T)	6-28-2012	Repeal	8-1-2012	943-045-0450(T)	12-23-2011	Repeal	2-1-2012
943-045-0260	12-5-2011	Adopt	1-1-2012	943-045-0460	12-23-2011	Adopt	2-1-2012
943-045-0260	6-28-2012	Adopt	8-1-2012	943-045-0460(T)	12-23-2011	Repeal	2-1-2012
943-045-0260(T)	12-5-2011	Repeal	1-1-2012	943-045-0470	12-23-2011	Adopt	2-1-2012
943-045-0260(T)	6-28-2012	Repeal	8-1-2012	943-045-0470(T)	12-23-2011	Repeal	2-1-2012
943-045-0280	12-5-2011	Adopt	1-1-2012	943-045-0480	12-23-2011	Adopt	2-1-2012
943-045-0280	6-28-2012	Adopt	8-1-2012	943-045-0480(T)	12-23-2011	Repeal	2-1-2012
943-045-0280(T)	12-5-2011	Repeal	1-1-2012	943-045-0490	12-23-2011	Adopt	2-1-2012
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943-045-0290	6-28-2012	Adopt	8-1-2012	943-045-0500(T)	12-23-2011	Repeal	2-1-2012
943-045-0290(T)	12-5-2011	Repeal	1-1-2012	943-045-0510	12-23-2011	Adopt	2-1-2012
943-045-0290(T)	6-28-2012	Repeal	8-1-2012	943-045-0510(T)	12-23-2011	Repeal	2-1-2012
943-045-0300	12-5-2011	Adopt	1-1-2012	943-045-0520	12-23-2011	Adopt	2-1-2012
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943-120-0120	7-12-2012	Amend(T)	8-1-2012				
943-120-0170	7-12-2012	Amend(T)	8-1-2012				
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